ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on June 2 and 3, 1992. See **tentative** agenda on pages 3299-3300 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
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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
11 KAR 5:001E

This emergency administrative regulation sets forth definitions of terms common to several administrative regulations that govern and coordinate KHEAA student financial assistance grant programs, which are likewise being promulgated as administrative regulations. It is necessary to promulgate this administrative regulation as an emergency regulation to permit the awarding of grants and notification to recipients in a timely manner to permit Kentucky students and their families to adequately plan for attendance at Kentucky educational institutions in the fall semester of 1992. Delay of awards and notifications pending the effective date of proposed ordinary regulations would not afford adequate time for those individuals to plan appropriately. Earlier implementation was not possible prior to passage of the Commonwealth's biennial budget to determine the availability of funds for the 1992-93 academic year. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 8, 1992.

BRERETON C. JONES, Governor
WAYNE STRATTON, Chairman

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:001E. Definitions pertaining to Chapter 5 of Title 11 of the Kentucky Administrative Regulations.

RELATES TO: KRS 164.740 to 164.785
STATUTORY AUTHORITY: KRS 13A.100, 164.748(4), HB 468 (1992 RS), Part I, F. 43, p. 47

EFFECTIVE: May 8,1992
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide student financial assistance to students for attendance at Kentucky postsecondary educational institutions. This regulation sets forth definitions of terms common to multiple regulations in this chapter. By defining the terms "Kentucky tuition grant" and "KHEAA grant", the substance of 11 KAR 5:010 is included in this regulation. Therefore, this regulation repeals 11 KAR 5:010.

Section 1. Definitions. For purposes of Chapter 5 of Title 11 of the Kentucky Administrative Regulations, the terms listed below shall have the following meanings:

(1) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(2) The definition of "authority" is governed by KRS 164.740(1).

(3) The definition of "business school" is governed by KRS 164.740(3).

(4) "College access program" or "CAP" means the program of student financial assistance grants authorized under HB 468 (1992 RS), Part I, F. 43, p. 47 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) The definition of "college" is governed by KRS 164.740(4).

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution; and

(c) For purposes of the college access program a business school, college, school of nursing or vocational school, and meets the requirements of the federal act; or

(d) For purposes of the Kentucky tuition grant program, a private, nonprofit college whose institutional programs are not comprised solely of sectarian instruction.

(8) The term "eligible noncitizen" means an individual who is either:

(a) A U.S. national;

(b) A U.S. permanent resident with an Alien Registration Receipt Card (1-151 or 1-551);

(c) A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

1. "Refugee";
2. "Asylum granted";
3. "Indefinite parole" and/or "humanitarian parole";
4. "Cuban-Haitian entrant".

Students who are in the U.S. on an F1 or F2 student visa only or a J1 or J2 exchange visitor visa only or a G series visa only are not eligible for KHEAA grant assistance.

(9) "Eligible program of study" means an undergraduate program offered by an educational institution which:

(a) Is of at least two (2) academic years duration; and

(b) Leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.

(10) The term "expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying congressional methodology set forth in Title IV, Part F of the federal act to the information that the student and his family provided on the application.

(11) The definition of "federal act" is governed by KRS 164.740 (9).

(12) "Full-time student" means a student who is carrying a full-time academic workload, other than by correspondence, measured in terms of:

(a) Course work or other required activities as determined by the institution in which the student is enrolled, including any combination of courses, work experience, research or special studies which the institution requires of the student to consider him as being engaged in full-time study, and which amounts to the equivalent of a minimum of twelve (12) semester hours or twelve (12) quarter hours per academic term for institutions utilizing trimesters, semesters, or quarter hour system, or which consists of a program requiring the minimum of twenty-five (25) clock hours per week for those institutions that do not utilize such systems; and

(b) The tuition and fees customary for full-time study at that institution.

(13) The definition of "grant" is governed by KRS 164.740(10).

(14) "Kentucky tuition grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(15) "KHEAA grant" means awards of student financial assistance grants under the college access program or the Kentucky tuition grant program or a combination of the two (2).

(16) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards to an individual, measured in terms of the number of semesters during which a KHEAA grant is disbursed to a full-time student and not fully refunded. The limit is depleted by one (1) semester:

(a) For any KHEAA grant disbursed to a full-time student in a semester; or

(b) By a CAP grant recipient enrolled less than full time, who receives the cumulative equivalent amount of CAP grant that would have been received by a full-time CAP grant recipient using the then current maximum CAP grant.

(17) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(18) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:120 through 5:145.

(19) "Resident of Kentucky" or "resident" means a person who is classified as an in-state student in accordance with criteria set forth in the "Residency Classification Policy" at 13 KAR 2:040, as adopted and from time to time amended by the Council on Higher Education.

(20) "Total cost of education" for an academic year means an amount determined for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

Section 2. 11 KAR 5:010, Authority, purpose, name of grant programs, is hereby repealed.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: April 28, 1992
FILED WITH LRC: May 8, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
11 KAR 5:033E

This emergency administrative regulation sets forth the student eligibility criteria for Kentucky Tuition Grants, formerly contained in a regulation that expired for reasons unrelated to the Kentucky Tuition Grant program. It is necessary to promulgate this administrative regulation as an emergency regulation to permit the awarding of grants and notification to recipients in a timely manner to permit Kentucky students and their families to adequately plan for attendance at Kentucky educational institutions in the fall semester of 1992. Delay of awards and notifications pending the effective date of proposed ordinary regulations would not afford adequate time for those individuals to plan appropriately. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 8, 1992.

BRERETON C. JONES, Governor
WAYNE STRATTON, Chairman

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:033E. KTG student eligibility requirements.

RELATES TO: KRS 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)
EFFECTIVE: May 8, 1992
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation sets forth student eligibility requirements for the Kentucky tuition grant program.

Section 1. Eligibility of Students. In order to qualify for disbursement of a Kentucky tuition grant, a student shall:

(1) Be a resident of the Commonwealth of Kentucky;

(2) Be enrolled as a full-time student in an eligible program of study;

(3) Be enrolled at an educational institution and not have previously earned a first baccalaureate or professional degree;

(4) Be determined by the authority, in accordance with 11 KAR 5:120 through 5:140, to have established financial need for the KTG;

(5) Have remaining KHEAA grant limit. For purposes of Kentucky tuition grant, a student enrolled in a two (2) year institution shall be limited to five (5) semesters of KHEAA grant eligibility. A student enrolled in a four (4) year institution shall be limited to nine (9) semesters of KHEAA grant program eligibility (including any KHEAA grant limit used at a two (2) year institution);

(6) Not receive financial assistance in excess of need to meet

educational expenses;

(7) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;

(8) Satisfy all financial obligations to the authority and to any educational institution. Ineligibility under this subsection may be waived for cause by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;

(9) Be a citizen of the United States or an eligible noncitizen; and

(10) Be receiving full-time credit at an educational institution in an eligible program of study and paying full-time tuition and fees to that institution, if the student is studying abroad or off-campus.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: April 28, 1992
FILED WITH LRC: May 8, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
11 KAR 5:034E

This emergency administrative regulation sets forth student eligibility criteria for College Access Program Grants authorized by HB 468 (the biennial budget bill). It is necessary to promulgate this administrative regulation as an emergency regulation to permit the awarding of grants and notification to recipients in a timely manner to permit Kentucky students and their families to adequately plan for attendance at Kentucky educational institutions in the fall semester of 1992. Delay of awards and notifications pending the effective date of proposed ordinary regulations would not afford adequate time for those individuals to plan appropriately. Earlier implementation was not possible prior to passage of the Commonwealth's biennial budget to determine the availability of funds for the 1992-93 academic year. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 8, 1992.

BRERETON C. JONES, Governor
WAYNE STRATTON, Chairman

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:034E. CAP grant student eligibility.

RELATES TO: KRS 164.744(2), 164.753(4)
STATUTORY AUTHORITY: KRS 164.748(4), HB 468 (1992 RS), Part I, F. 43, p. 47
EFFECTIVE: May 8, 1992
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs of student financial assistance, including federal funds under the state student incentive grant program. House Bill 468 authorized and directed the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. That budget bill also authorized the authority to promulgate administrative regulations pertaining to administration of those grants, to use appropriated funds to match federal funds, and to conform those regulations to federal law for full participation in the state student incentive grant program. This regulation establishes student eligibility requirements for the college access program. This regulation substantially duplicates provisions of 11 KAR 11:010 adopted under authority of a prior biennial budget, and therefore contains a section repealing that prior regulation.

Section 1. In order to qualify for disbursement of a college access program grant, a student shall:

(1) Be a resident of Kentucky;

(2) Be enrolled at an educational institution for six (6) or more semester hours in an eligible program of study and not have previously earned a first baccalaureate or professional degree;

(3) Demonstrate financial need in accordance with 11 KAR 5:120 through 5:145 for CAP grant assistance;

(4) Have remaining KHEAA grant limit. For purposes of a CAP grant, a student enrolled in a two (2) year institution shall be limited to five (5) semesters of KHEAA grant program eligibility. A student enrolled in a four (4) year institution shall be limited to nine (9) semesters of KHEAA grant program eligibility (including any KHEAA grant limit used at a two (2) year institution);

(5) Not receive financial assistance in excess of need to meet educational expenses;

(6) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;

(7) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 and to any educational institution, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;

(8) Be a citizen of the United States or an eligible noncitizen; and

(9) Be receiving full-time credit at an educational institution in an eligible program of study and paying full-time tuition and fees to that institution, if the student is studying abroad or off-campus.

Section 2. 11 KAR 11:010, College access program grants establishment and eligibility, is hereby repealed.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: April 28, 1992
FILED WITH LRC: May 8, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
11 KAR 5:140E

This emergency administrative regulation sets forth the maximum award amounts for Kentucky Tuition Grants and coordinates the KTG awards with College Access Program awards authorized by HB 468 (the biennial budget bill). It is necessary to promulgate this administrative regulation as an emergency regulation to permit the awarding of grants and notification to recipients in a timely manner to permit Kentucky students and their families to adequately plan for attendance at Kentucky educational institutions in the fall semester of 1992. Delay of awards and notifications pending the effective date of proposed ordinary regulations would not afford adequate time for those individuals to plan appropriately. Earlier implementation was not possible prior to passage of the Commonwealth's biennial budget to determine the availability of funds for the 1992-93 academic year. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 8, 1992.

BRERETON C. JONES, Governor
WAYNE STRATTON, Chairman

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:140E. KTG award determination procedure.

RELATES TO: KRS 164.744(2) to 164.753(4) [~~164.740 to 164.764~~], 164.780, 164.785
STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)
EFFECTIVE: May 8, 1992
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers the Kentucky tuition grant program to provide financial assistance to students to attend Kentucky educational institutions. This regulation sets forth the award determination procedures for the Kentucky tuition [~~KHEAA~~] grant program. This amendment is necessary to delete common definitions that are being placed in a separate regulation and delete references to the state student incentive grant program [~~change the maximum, state grant award~~].

Section 1. Definitions. [~~The terms "authority" and "grant" shall have the meanings defined in KRS 164.740.~~] For purposes of this regulation, the terms listed below shall have the following meanings:

[~~(1) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty four (24)~~

~~semester hours, or thirty-six (36) quarter hours of instruction.~~

~~(2) "Application date" means the date that the application is processed by the College Scholarship Service.~~

~~(3) "CAP grant" means an award by the authority under the college access program administered pursuant to 11 KAR 11:010, et seq.~~

~~(4) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses and reasonable transportation costs for the academic period of the grant application.~~

~~(5) "Educational institution" means a participating institution located in Kentucky which:~~

~~(a) Offers an eligible course of study;~~

~~(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution;~~

~~(c) Has entered into an administrative agreement with the authority; and~~

~~(d) For purposes of the State Student Incentive Grant Program, a business school, college, school of nursing or vocational school, as defined in KRS 164.740(3), (4), (17), and (18) respectively and meets the requirements of the federal act; or~~

~~(e) For purposes of the Kentucky Tuition Grant Program, a private, nonprofit college accredited by the Southern Association of Colleges and Schools, Commission on Colleges, and whose institutional programs are not comprised solely of sectarian instruction.~~

~~(6) "Eligible course of study" means a program offered by an educational institution which:~~

~~(a) Is of at least two (2) academic years duration; and~~

~~(b) Leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.~~

~~(7) "Full-time student" means a student who is carrying a full-time academic workload, other than by correspondence, measured in terms of:~~

~~(a) Course work or other required activities as determined by the institution in which the student is enrolled, including any combination of courses, work experience, research or special studies which the institution requires of the student to consider him as being engaged in full-time study, and which amounts to the equivalent of a minimum of twelve (12) semester hours or twelve (12) quarter hours per academic term for institutions utilizing trimesters, semesters or quarter hour systems or which consists of a program requiring the minimum of twenty-five (25) clock hours per week for those institutions that do not utilize such systems; and~~

~~(b) The tuition and fees customary for full-time study at that institution.~~

~~(8) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the authority's on-campus agent to certify all institutional transactions and activities with respect to the KHEAA grant programs.~~

~~(9) "Overaward" means provision through any and all sources of financial assistance to meet educational expenses in excess of a student's need.~~]

[~~(10)~~] "Pell grant" means an award under the Pell Grant Program operated by the secretary [~~United States Government~~] under the provisions of Title IV Part A, subpart 1 of the federal act [~~20 USC 1070a~~].

[~~(11) "Total cost of education" or "TCE" for an academic year means an amount determined for each applicant by the following formula: normal tuition and fees for a full-time student at the institution chosen by the applicant plus maximum board contract amount plus minimum room contract amount.~~]

[~~Section 2. State Student Incentive Grant (SSIG) Program Awards. Each application shall be reviewed for determination that all eligibility requirements set forth in 11 KAR 5:030 for SSIG are met. To qualify for an SSIG award based on financial need, the applicant's family contribution using Congressional methodology, prescribed in Title IV, Part F of the federal act (20 USC §1087kk through §1087vv) shall be $3,000 or less. SSIG awards shall be offered, based on the application date, until funds are depleted.~~]

Section 2. [~~3.~~] Kentucky Tuition Grant (KTG) Program Awards. Whether or not the applicant is eligible for a CAP grant [~~SSIG~~] award, the application shall be reviewed for determination of eligibility for a KTG.

Section 3. [~~4.~~] KTG Need. For each KTG eligible applicant, the KTG need shall be computed according to the following formula: KTG need equals total cost of education minus the sum of:

(1) Expected Pell grant;

(2) Expected [~~Congressional methodology~~] family contribution; and

(3) CAP grant [~~or SSIG~~].

Section 4. [~~5.~~] KTG Award. (1) If an applicant does not qualify for a CAP grant [~~or SSIG award,~~] and the KTG need is an amount equal to or greater than $200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3), except that KTG awards shall be offered only to the extent funds are available.

(2) If an applicant does not qualify for a CAP grant [~~or SSIG award~~], and the KTG need is an amount less than $200, no award shall be made.

(3) If an applicant has received a CAP [~~or SSIG~~] award and KTG need is an amount equal to or greater than fifty (50) dollars, the KTG award shall be the lesser of the KTG need or the maximum grant specified in Section 6 of this regulation [~~established by the authority pursuant to KRS 164.785(3),~~] except that KTG awards shall be offered only to the extent that funds are available.

(4) A KTG shall not exceed $1,200 for an academic year.

Section 5. [~~6.~~] Minimum KHEAA Grant. The minimum KHEAA grant awarded to an eligible full-time student [~~any recipient~~] for a given academic year shall be $200.

[~~Section 7. SSIG and KTG shall be awarded as a KHEAA grant.~~]

Section 6. [~~8. The combination of a CAP grant and~~] A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award. A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books. [~~An SSIG for any semester shall not exceed the prevailing full-time student tuition charge at publicly supported community colleges at the time of the award. A KTG shall not exceed $1,200 for an academic year.~~] A semester award shall not exceed tuition and fee charges for that semester. No KHEAA grant award shall be made for a summer academic term.

Section 7. [~~9.~~] In no event shall the KHEAA grant award exceed the applicant's total cost of education less expected family contribution and other anticipated student financial assistance. The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the educational institution's determination of financial need for that student. The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

Section 8. [~~10.~~] If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked. If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant for which the student was ineligible.

Section 9. [~~11.~~] If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction. If the grant for the fall academic term has already been disbursed, then the reduction shall be made to the spring disbursement. If both the fall and spring disbursements have been made, the student shall [~~be notified that he or she must~~] repay the overaward to the authority.

Section 10. [~~12.~~] Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the educational institution shall be deemed ineligible, and the grant shall be revoked.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: April 28, 1992
FILED WITH LRC: May 8, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
11 KAR 5:145E

This emergency administrative regulation sets forth the maximum award amounts for College Access Program Grants authorized by HB 468 (the biennial budget bill). It is necessary to promulgate this administrative regulation as an emergency regulation to permit the awarding of grants and notification to recipients in a timely manner to permit Kentucky students and their families to adequately plan for attendance at Kentucky educational institutions in the fall semester of 1992. Delay of awards and notifications pending the effective date of proposed ordinary regulations would not afford adequate time for those individuals to plan appropriately. Earlier implementation was not possible prior to passage of the Commonwealth's biennial budget to determine the availability of funds for the 1992-93 academic year. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 8, 1992.

BRERETON C. JONES, Governor
WAYNE STRATTON, Chairman

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:145E. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4)
STATUTORY AUTHORITY: KRS 164.748(4), HB 468 (1992 RS), Part I, F. 43, p. 47
EFFECTIVE: May 8, 1992
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation prescribes the award determination procedures for the CAP grant program. The provisions of this regulation substantially duplicate 11 KAR 11:030. Therefore, this regulation contains a repeal of 11 KAR 11:030.

Section 1. Each application shall be reviewed for determination that all eligibility requirements set forth in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be $3,000 or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (3) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution shall be the prevailing full-time student tuition charge at publicly supported community colleges in Kentucky at that time.

(2) Except as provided in subsection (3) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution shall be the prevailing tuition charge per semester credit hour at publicly supported community colleges in Kentucky (not in excess of the maximum specified in subsection (1) of this section).

(3) The maximum awards specified in subsections (1) and (2) of this section shall be adjusted by the authority as necessary to conform those maximums to the tuition rate generally charged for attendance at the Commonwealth's publicly supported community colleges, as determined by the Council on Higher Education.

Section 3. Minimum KHEAA Grant. The minimum KHEAA grant awarded to an eligible full-time student for an academic year shall be $200.

Section 4. A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award. A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books. A semester award shall not exceed tuition and fee charges for that semester. No KHEAA grant award shall be made for a summer academic term.

Section 5. In no event shall the KHEAA grant award exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance. The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student. The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

Section 6. If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked. If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 7. If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction. If the grant for the fall academic term has already been disbursed, then the reduction shall be made to the spring disbursement. If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 8. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

Section 9. 11 KAR 11:030, Award determination procedure, is hereby repealed.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: April 28, 1992
FILED WITH LRC: May 8, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
101 KAR 2:036E

This emergency regulation establishes rules for the classified service governing the classification and compensation of state employees. Such rules are required by KRS 18A.030, 18A.110 and 18A.165. The emergency regulation provides for a uniform system of compensation and classification to continue in force upon the expiration of 101 KAR 2:035. The substantial change in this emergency regulation is the elimination of the Outstanding Merit Increase section in 101 KAR 2:035, Section 11 that was the sole basis for the finding of deficiency during the interim. This regulation is also immediately necessary as a legal basis to pay state employees until a replacement regulation can be promulgated. This regulation shall be replaced by an ordinary regulation to be filed with the Compiler on May 15, 1992.

BRERETON C. JONES, Governor
SHIRLEY J. CLARK, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:036E. Compensation plan and pay incentive systems.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.110
EFFECTIVE: May 15, 1992
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Appointments. Initial appointments shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and experience over and above the minimum requirements set for the job classification. Employees possessing qualifications similar to the applicant being appointed that are employed in the same job classification, by the same agency, in the same county shall have their salaries adjusted by the appointing authority to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 2. Reentrance to State Service. (1) Appointing authorities, with the approval of the commissioner, may place reemployed, reinstated, or former employee probationally appointed at a salary:

(a) Which is the same as that paid at the time of separation from state service if such salary is within the current pay grade;

(b) Higher than that paid at the time of separation from state service due to salary schedule or pay grade adjustments;

(c) In accordance with the standards used for making new appointments; or

(d) Lower than that paid at the time of separation from the classified service if such salary is within the current pay grade.

(2) Former employees who were separated from state service by layoff and who are reinstated or reemployed in the same or a similar job classification within five (5) years from the date of layoff may receive the salary they were receiving at the time of layoff, even if such salary is above the maximum of the pay grade.

(3) Former employees reemployed, reinstated or probation-ally appointed to a salary:

(a) Below the midpoint of the pay grade shall be considered for a probationary increment at the time of completion of the probationary period;

(b) Which equals or exceeds the midpoint of the pay grade may be considered for a probationary increment at the time of completion of the probationary period. If such employee is not considered for an increment upon completion of the probationary period, he shall be considered for an increment at the beginning of the month following completion of twelve (12) months service from the date of reemployment, reinstatement or appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of not less than five (5) percent upon promotion. In no case shall the employee's salary be below the minimum of the higher grade following promotion. Employees completing a promotional probationary period may receive a five (5) percent promotional increase at the beginning of the month following completion of the probationary period. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a ten (10) percent or fifteen (15) percent salary increase over the employee's previous salary. A promotional increase shall not change the employee's regular increment date.

(2) Demotion. An employee who is demoted may have his salary changed to a rate which is in the pay grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Reclassification. An employee who is advanced to a higher pay grade through reclassification shall receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the new pay grade. An employee who is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification.

(4) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade. An employee who is placed in a lower pay grade through reallocation shall receive the same salary he was receiving prior to reallocation.

(5) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 2:070, Section 2, may receive a five (5) percent increase upon detail to a higher job classification, except that in no case shall the employee's salary after such increase be below minimum of the higher pay grade.

(6) Reversion.

(a) An employee who is reverted while serving a promotional probationary period following promotion, or following detail to special duty to a higher job classification, shall have his salary changed to the rate received prior to such promotion or detail to special duty and is entitled to all salary advancements and adjustments he would have received had he not left the job classification.

(b) An employee who is reverted to a position in the classified service from a position in the unclassified service shall have his salary changed to the rate received at the time he left the classified service and is entitled to all salary advancements and adjustments he would have received had he not left the classified service.

(7) Pay grade changes. An employee who is advanced to a higher pay grade through a class reevaluation and grade adjustment under Section 7 of this regulation may receive a salary increase of five (5) percent or ten (10) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade.

(8) Other salary adjustments.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, effective on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Subject to approval by the commissioner, an appointing authority may request a five (5) percent salary adjustment when a special entrance rate is established under Section 7(3) of this regulation.

Section 4. Salary Advancements. (1) Probationary increments. Full-time and part-time employees who complete an initial probationary period with satisfactory performance shall be granted an increment at the beginning of the month following completion of the probationary period, except as specified under Section 2(3) of this regulation. The service may be provisional or probationary.

(2) Annual increment dates shall be established:

(a) Following completion of an initial probationary period, with satisfactory performance, or following completion of twelve (12) months service from the date of appointment, reinstatement, or reemployment, pursuant to Section 2(3) of this regulation.

(b) When an employee returns from leave without pay pursuant to subsection (4) of this section.

(3) Annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; or

(i) Is promoted or receives a promotional increase after completion of a promotional probationary period.

(4) Return from leave without pay. Employees returning to duty from leave without pay shall receive an annual increment when they have completed twelve (12) months of service since the date they last received an annual increment.

(5) Service computation. In computing service for the purpose of determining annual increment eligibility, in those cases where an employee is changed from part time to full time, part-time service shall be counted in determining increment eligibility for a full-time employee. In those cases where an employee is changed from full time to part time, full-time service shall be counted in determining increment eligibility for a part-time employee.

Section 5. Educational Achievement Award. The participation of an appointing authority in the program for educational achievement awards is contingent upon adequate funding, to be determined by the appointing authority through the budgetary process, for all eligibles within the agency. Upon request of the appointing authority and subject to the approval of the commissioner, a permanent employee, with status may receive one (1) lump sum educational achievement award per fiscal year:

(1) For satisfactorily completing outside of work hours 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses, must have been completed after a merit employee initially gained permanent status in state government. Employees shall not receive credit for courses taken while on educational leave, for hours paid for by the agency through tuition assistance, or for courses which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than $2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) For receiving outside of work hours an approved high school diploma, high school equivalency certificate, or a passing score on the GED test. The approved diploma, certificate, or passing score must have been obtained on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the GED test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than $2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the GED test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) To apply for an educational achievement award an employee shall submit the educational achievement request form DPT-10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent together with official transcripts or grade reports for the courses completed) to the appointing authority or his designee. In compliance with the standards set forth in this regulation, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval. A lump sum educational achievement award shall not be added to the employee's base salary or wages.

Section 6. Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades. The commissioner may authorize a salary increase for those employees who are at or above the minimum rate based upon the availability of funds. The percentage of such increase shall be determined by the commissioner and shall be uniform for all eligible employees.

Section 7. Class Reevaluation and Grade Adjustment. (1) Class reevaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in subsection (1) of this section, the commissioner may make a new or different pay grade applicable to a class of positions. Persons currently employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary adjustment under Section 3(7) of this regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees in a class assigned to a lower pay grade through class reevaluation shall retain their current salary.

(3) Recruitment difficulties. Whenever the commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may, at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same county are adjusted in salary to the same rate.

Section 8. Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100, Section 4, and the Fair Labor Standards Act 29 USC §201, et seq. and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime payments shall not be added to base salary or wages.

Section 9. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such maintenance shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the commissioner after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 10. Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those job classifications in which employees are directed to work an evening or night shift. Once authorized, this premium shall apply to those employees directed to work an evening or night shift in a job classification for which the shift premium was approved. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment.

SHIRLEY J. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

STATEMENT OF EMERGENCY
101 KAR 2:046E

This emergency regulation will provide rules governing applications, qualifications and examinations for the classified service of state government upon expiration of 101 KAR 2:045. Such rules continue to be required by KRS 18A.030, 18A.110 and 18A.120 and to qualify for federal funds under Title II of the Intergovernmental Personnel Act of 1970. The substantive difference between this regulation and 101 KAR 2:045 is that former Section 8(3) listing equal classes is eliminated and language describing the relocation method is inserted. This is to comply with the finding of deficiency made by the Interim Committee. This regulation shall be replaced by an ordinary regulation to be filed with the Compiler on May 15, 1992.

BRERETON C. JONES, Governor
SHIRLEY J. CLARK, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:046E. Applications, qualifications and examinations.

RELATES TO: KRS 18A.030, 18A.110, 18A.120
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110, 18A.150

EFFECTIVE: May 15, 1992

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern open competitive exams to test the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the commissioner. This regulation is necessary to implement these statutory requirements and to assure uniformity in administering exams.

Section 1. Notices of Examinations. Examinations for entrance to the classified service shall be conducted on an open-competitive basis. For those job classifications in which there is expected to be a considerable and recurring need of eligibles, the commissioner shall establish a recruitment program which shall be both positive and continuous. Under such plan, applications may be accepted at any time and examinations held whenever and wherever the commissioner deems it desirable for the service. For those job classifications for which continuous recruitment is not needed, special announcements will be used. Eligibles will be listed in rank order of score irrespective of date on which the examination was taken. Notice of examinations shall be announced publicly fifteen (15) days prior to opening and may be distributed to public officials, employment service offices, newspapers, radio stations, educational institutions, professional and vocational societies, other media and such other individuals and organizations as the commissioner may deem expedient. The public notice of examination shall specify the title and minimum salary of the job classifications; the minimum qualifications required; the final date on which application will be received; the relative weights to be assigned to different parts of the examination; and all pertinent information and requirements.

Section 2. Minimum Qualifications for Filing. Open-competitive examinations shall be open to all applicants who meet the standards or requirements fixed by the commissioner with regard to education, experience, age, physical condition, and such other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency the duties of the position.

Section 3. Filing Applications. (1) All applications shall be made on forms prescribed by the commissioner. Such application may require information concerning personal characteristics, education, experience, references, and other pertinent information. When the nature of the work is such that age limits are necessary, the commissioner after consultation with the appointing authority may approve the age limits, which shall be stated in the examination announcement. All applications shall be signed and the truth of the statements contained therein certified by such signatures. Applicants must meet the minimum qualifications specified in announcements as to education and experience, but in no case shall admittance to the examinations constitute assurance of a passing grade.

(2) For those job classifications for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that applications will be received until further notice.

(3) For those job classifications for which continuous recruitment is not needed, special announcement bulletins will be used. Applicants shall have fifteen (15) calendar days to apply for these special openings. The applications will be processed and those applicants who meet the minimum requirements will be notified of the testing dates.

Section 4. Advance Examinations. Any applicant who does not meet minimum requirements as to education but who will meet these requirements as a result of the completion of further educational work which he has scheduled for the six (6) months following the date of receipt of application, may be allowed to take the examination at the discretion of the commissioner. An applicant taking the examination under this provision shall have his or her name entered on the register up to thirty (30) days prior to completing the educational requirements.

Section 5. Character of Examinations. Examinations shall be practical in nature, constructed to reveal the capacity of the candidate for the particular job classification for which he is competing and his general background and related knowledge, and shall be rated impartially. The commissioner may use a rating of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness which in his judgment serves the need to discover the relative fitness of applicants.

Section 6. Conduct of Examinations. (1) Examinations shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) The commissioner may designate monitors in various parts of the Commonwealth to take charge locally of examinations under instructions prescribed by him, provide for the compensation of such monitors, and make arrangements for the use of public buildings in which to conduct the examinations.

(3) Retest procedures.

(a) For open continuous testing an applicant may be admitted to the same exam or its alternate no more than two (2) times within a regular workweek.

(b) For open continuous testing an applicant shall not be permitted to take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date such test is taken.

(c) Retest procedures for examinations listed on special announcements shall be stated on the bulletin.

(d) An eligible who is removed from a register, who fails to make himself available to an appointing authority for consideration or who declines appointment by an appointing authority shall not be allowed to retest for the job class from which removed for six (6) months from the date of removal unless he has been restored for reasons satisfactory to the commissioner or in accordance with the decision of the board on appeal.

Section 7. Rating Examinations. The commissioner shall determine the rating or standing of applicants on the register for all examinations. Such final rating shall be based upon a weighted average of the various parts of the total examination. All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) When the rating of education and experience forms a part of the total examination, the commissioner shall determine a procedure for the evaluation of the education and experience qualifications of the applicants. The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience and the pertinency of the education.

(2) The commissioner shall investigate the candidate's educational record form. The commissioner may investigate the candidate's work history. If the results of this investigation bring out information affecting the rating of education and experience, the commissioner may rate the candidate accordingly or make the necessary revision of the rating and so notify the candidate.

(3) When the knowledges, skills and abilities for a job classification are those which cannot best be measured by written, performance, or training and experience examination the commissioner may determine the selection method for the classification to be qualifying. When a classification is determined to be qualifying the commissioner shall notify the Personnel Board of the classification and the minimum requirements. The commissioner shall maintain a list of those classifications which are qualifying along with the minimum requirements for each for public review.

Section 9. Oral Examinations. When an oral examination forms a part of the total examination for a position, the commissioner shall appoint one (1) or more oral examination panels as needed. An oral examination panel shall consist of three (3) or more members who shall be known to be interested in the improvement of public administration and in the selection of efficient government personnel of whom one (1) shall be technically familiar with the character of work in the position for which the applicants will be examined. Whenever practicable, all candidates for the same job classification who qualify for the oral examination shall be rated by the same oral examination panel. A member of an oral examination panel shall disclose each instance in which he knows the applicant personally and may refrain from rating such applicant.

Section 10. Notice of Examination Results. Each competitor shall be notified of his final rating as soon as the rating of the examination has been completed. Eligibles shall be entitled to information

concerning their relative position on the register upon request and presentation of proper identification.

Section 11. Adjustment of Errors. An error in the rating of an examination, if called to the attention of the commissioner within thirty (30) days after receipt by the applicant of the notice of examination results shall be corrected by the commissioner provided, however, that such corrections shall not invalidate any certification and appointment previously made.

Section 12. Examination Records. The commissioner shall be responsible for the maintenance of all records pertinent to examination programs. Applications and other necessary examination records shall be kept during the life of the register.

SHIRLEY J. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

STATEMENT OF EMERGENCY
101 KAR 2:056E

This emergency regulation will provide for rules governing the employment register system by which employees are appointed or reemployed upon the expiration of 101 KAR 2:055. Such rules continue to be required by KRS 18A.030 and 18A.110. The substantive difference between this regulation and the deficient regulation is that Section 7 of 101 KAR 2:055, relating to the State Job Bank, which was the basis for the deficiency, has been eliminated. This regulation shall be replaced by an ordinary regulation to be filed with the Compiler on May 15, 1992.

BRERETON C. JONES, Governor
SHIRLEY J. CLARK, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:056E. Registers.

RELATES TO: KRS 18A.005, 18A.110, 18A.120
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.040, 18A.110
EFFECTIVE: May 15, 1992
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the commissioner. This regulation is necessary to comply with these statutory requirements.

Section 1. Notification of Register Vacancies. It shall be the duty of the appointing authorities to notify the commissioner as far in advance as possible of vacancies in full-time or part-time classified positions which may occur in the agencies.

Section 2. Use of Related Registers. The commissioner shall select registers from job classifications for which the minimum qualifications are comparable to or higher than those required for the job classification in which the vacancy exists. The commissioner may, if appropriate, rerate training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

Section 3. Duration of Registers. When a register becomes so depleted that the preparation of usable certificates for a major portion of the imminent vacancies of the job classification is impracticable, the register shall be considered exhausted. The register which has become exhausted shall be considered expired upon the administration of a superseding examination and the establishment of a register on the basis of that examination. When a register becomes exhausted, the commissioner shall send to each eligible remaining on such register a notification prior to the administration of a superseding examination.

Section 4. Replenishment of Registers. If the commissioner determines that a register, although not exhausted, is inadequate for the filling of anticipated vacancies, he may announce an open competitive examination for the purpose of replenishing such register.

Section 5. Promotional Register. At the request of the appointing authority, the commissioner shall prepare a register of status employees interested in promotion to a full-time or part-time classified position who meet the minimum requirements and has obtained a passing grade on the competitive promotional examination. The names of such employees shall be placed on the register in the order of their final ratings, starting with the highest. The register shall be certified to agencies for their consideration in filling vacancies from a promotional register.

Section 6. Full-time or Part-time Reemployment Registers. The commissioner shall prepare reemployment registers.

SHIRLEY J. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

STATEMENT OF EMERGENCY
101 KAR 2:066E

This emergency regulation establishes rules for the certification and selection of individuals eligible for appointment to positions in the classified service of state government. KRS 18A.030 and 18A.110 continue to require the commissioner to prescribe rules concerning these matters. This regulation replaces 101 KAR 2:065 which was declared deficient during the interim. The substantive difference between this regulation and 101 KAR 2:065 is that the repetition of statutory language in Section 2(2) has been eliminated. This regulation shall be replaced by an ordinary regulation to be filed with the Compiler on May 15, 1992.

BRERETON C. JONES, Governor
SHIRLEY J. CLARK, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:066E. Certification and selection of eligibles for appointment.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110
EFFECTIVE: May 15, 1992
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the establishment of eligible lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the exam. This regulation is necessary to comply with these statutory requirements.

Section 1. Request for Certification of Eligibles. To fill a vacancy by selection of an eligible from a register established on the basis of an open-competitive examination, the appointing authority shall submit a request for certification to the commissioner upon a prescribed form. This requisition may be for one (1) or more positions in the same class, in the same county, and shall indicate the number and identity of positions to be filled and the title of the job classification in which they have been allocated and specify all other pertinent information which the appointing authority and the commissioner deem necessary. The appointing authority shall make such request as far in advance as possible of the date the employee is to begin work.

Section 2. Certification of Eligibles. Upon receipt of a requisition, the commissioner shall certify and submit in writing to the appointing authority the names of available persons eligible for the appointment. If one (1) position is involved, he shall certify and submit from the register for that job classification the names of the persons whose scores are included in the highest five (5) scores earned on the

examination, providing the commissioner shall fix a reasonable maximum number of eligibles certified. If more than one (1) vacancy is involved, either in one (1) or more agencies, the commissioner shall certify sufficient additional names for the agencies' consideration in filling the total number of vacancies by procedures to retain orderly consideration of eligibles; however, each appointment must be made from the eligibles with the five (5) highest scores. Scores shall be considered in whole numbers. If the register, established as a result of the open-competitive examination for a specific class, is exhausted, the commissioner shall certify and submit names in accordance with the above procedure. The life of a certificate during which action may be taken shall be forty-five (45) days from the date of issue unless otherwise specified on the certification. Any appointment made from such certificate during that time shall not be subject to any change in the condition of the register taking place during that period.

Section 3. Availability. An eligible may at any time during the life of a register have himself listed as available or not available for appointment to a position of that job classification in any county or counties in the state by filing notice to such effect with the commissioner.

Section 4. Selective Certification. (1) The appointing authority may specify in writing requirements of particular experience, education, or skill when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the particular experience, education, or skill essential for successful performance he may certify in order of rank on the register the names of those persons who possess those qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) The appointing authority may specify in writing exceptional requirements of particular characteristics when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the exceptional requirement of the characteristic essential for successful performance, he may certify in order of rank on the register the names of those persons who possess the qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

Section 5. Selection. The final selection by the appointing authority shall be reported in writing to the commissioner. At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the commissioner the nonavailability of any eligibles passed over for that reason.

Section 6. Certification from the Promotional Register. Whenever a vacancy is to be filled from a promotional register established as a result of a competitive examination, the commissioner shall certify the names of eligibles in accordance with 101 KAR 2:056, Section 5.

Section 7. Certification of Names from the Reemployment Register. Whenever a vacancy is to be filled from a reemployment register, the commissioner shall certify the names of eligibles.

SHIRLEY J. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

STATEMENT OF EMERGENCY
101 KAR 2:076E

This emergency regulation establishes rules for the classified service governing the filling of vacancies and detail to special duty as well as temporary overlap. Such regulations are required by KRS 18A.110. This regulation replaces 101 KAR 2:075 which expired at the conclusion of the 1992 session of the General Assembly. The substantial difference between this regulation and the one found deficient is that Section 1 has been extended to include reversion and reemployment among the methods for filling vacancies. This regulation shall be replaced by an ordinary regulation to be filed with the Compiler on May 15, 1992.

BRERETON C. JONES, Governor
SHIRLEY J. CLARK, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:076E. Vacancies, detail to special duty and temporary overlap.

RELATES TO: KRS 18A.005, 18A.110, 18A.115, 18A.120
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110
EFFECTIVE: May 15, 1992
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the various types of appointments, such as probationary, emergency, provisional, reinstatement, and for such other regulations, not inconsistent with KRS Chapter 18A, as may be proper and necessary. This regulation is necessary to comply with these statutory requirements and replaces 101 KAR 2:070.

Section 1. Filling of Vacancies. All vacancies in the classified service which are not filled by promotion, transfer, or demotion, shall be filled by probationary appointment, reemployment of career employees or of laid-off employees, reversion, reinstatement, emergency appointment or provisional appointment.

Section 2. Detail to Special Duty. When the services of a permanent employee are needed in a position within an agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the commissioner. For detail to special duty the commissioner may waive the minimum requirements when requested by the appointing authority in writing.

Section 3. Temporary Overlap. With the prior approval of the commissioner, an agency may place an employee for training purposes or in the best interest of the state service, in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

SHIRLEY J. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

STATEMENT OF EMERGENCY
201 KAR 18:040E

This emergency administrative regulation amendment increases administrative and examination fees charged by this board. In order to effectuate these raises for the FY 1992-93 renewal period, it is necessary to promulgate this emergency administrative regulation. This board has determined the existence of an emergency as it regards this proposed amendment because an ordinary amendment will not go into effect in time to notify licensees by May 1 of the increase as provided by KRS Chapter 322. Fee increases are necessary to meet budgetary guidelines. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on April 15, 1992.

BRERETON C. JONES, Governor
ROBERT L. KAISER, Vice-Chairman

FINANCE AND ADMINISTRATION CABINET
Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:040E. Fees.

RELATES TO: KRS 322.040, 322.090, 322.100, 322.110, 322.120, 322.140, 322.150, 322.160, 322.420
STATUTORY AUTHORITY: KRS 322.090, 322.100, 322.120, 322.140, 322.290, 322.420
EFFECTIVE: April 27, 1992
NECESSITY AND FUNCTION: KRS Chapter 322 gives the board certain authority to fix fees, and this is intended to outline fees covering various steps of application, examination, certification, registration and/or renewal fees.

Section 1. Fees. (1) The license fee under KRS 322.040 shall be $170 [~~140~~], of which thirty (30) dollars is payable on application. If approved, the fee for examination shall be $130 [~~100~~]. The license fee under KRS 322.120 shall be $200 [~~150~~] all of which is payable on application. The license fee under KRS 322.040(2)(a) shall be $160 [~~140~~] of which thirty (30) dollars is payable as an application fee. If approved, the fee for examination shall be $120 [~~100~~]. The amounts specified as application fees shall accompany each application; fees specified as examination fees shall be received in the board office at least two (2) weeks prior to the examination date. All fees shall be transmitted by check or money order made payable to "Kentucky State Registration Board."

(2) Application fees shall be retained by the board as nonrefundable fees.

(3) If approved under KRS 322.120 the license certificate shall be issued without further fee, and if under KRS 322.040, it will be issued upon receipt by the board of the final payment of ten (10) dollars, representing the balance of the total licensing fee [~~of $140~~].

(4) Only one (1) complete application form is required for a license in any one or more branches of engineering or land surveying. However, an updating of the application and an additional examination fee of $130 [~~100~~] and an additional ten (10) dollar final fee is required for each additional branch of engineering or section of the law under which the applicant subsequently applies for licensing. The update must stress the work experience the applicant has had in the branch he wishes to add.

(5) The application fee to take the engineer in training examination shall be forty (40) dollars, and the land surveyor in training examination shall be sixty (60) [~~forty (40)~~] dollars.

(6) The annual renewal fee for the license of a professional engineer or a professional land surveyor shall be forty (40) dollars for fiscal year 1992-93 and shall be forty-five (45) dollars thereafter [~~thirty five (35) dollars~~]. License renewal shall be on a biennial basis.

(7) The fee for reinstatement of an expired license shall be $250 [~~150~~].

(8) The fee for verifying a registrants licensure to another state or jurisdiction shall be ten (10) dollars.

ROBERT L. KAISER, Vice Chairman
APPROVED BY AGENCY: April 10, 1992
FILED WITH LRC: April 27, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
601 KAR 11:040E

This emergency administrative regulation establishes a new date by which drivers of commercial motor vehicles who operate exclusively in intrastate commerce shall have applied for a medical waiver. This administrative regulation needs to be adopted on an emergency basis because the March 31, 1992 date in the existing administrative regulation has been extended by the federal government to March 31, 1993. Section 11 of House Bill 628 passed by the 1992 General Assembly requires that the Transportation Cabinet, by administrative regulation, take advantage of all time extensions offered by the U.S. Department of Transportation relating to the commercial driver's license. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on April 14, 1992.

BRERETON C. JONES, Governor
DON C. KELLY, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
Division of Motor Carriers
Division of Motor Vehicle Enforcement

601 KAR 11:040E. Medical waivers for intrastate operators of commercial motor vehicles.

RELATES TO: KRS Chapter 281A, 281.600, 49 CFR Part 383, 49 CFR Part 391
STATUTORY AUTHORITY: KRS 281A.040, 281.600, 49 CFR 383 Subpart E, 49 CFR 391 Subpart E
EFFECTIVE: April 22, 1992
NECESSITY AND FUNCTION: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 CFR Part 391.The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 CFR Part 391. He is subject however, to Kentucky driver qualification requirements. In 601 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 CFR Part 391 on both an interstate and intrastate commerce basis. However, medical waivers in addition to those allowed in 49 CFR 391.49 are allowed until March 31, 1993 [~~1992~~] for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

Section 1. Application for Intrastate Medical Waiver. (1) A commercial driver who operates exclusively in intrastate commerce and who has failed to meet the physical requirements of 49 CFR 391 Subpart E, adopted in 601 KAR 1:005 may apply to the Transportation Cabinet until March 31, 1993 [~~January 31, 1992~~] for a medical waiver.

(2) The application for medical waiver shall be on Kentucky Transportation Cabinet from TC 94-38, "Request for Medical Waiver" effective [~~adopted~~] January, 1991. This form is incorporated by reference as a part of this administrative regulation.

(3) A copy of the completed medical examination form required by 49 CFR 391.43 and 601 KAR 1:005 shall be attached to the application for medical waiver. The form shall be completed by a licensed doctor of medicine or osteopathy. The medical examination form shall indicate the reason the applicant failed to meet the requirements of 49 CFR 391 Subpart E.

(4) A copy of the applicable supplemental medical report form completed by a licensed doctor of medicine or osteopathy shall be attached to the application for medical waiver. The supplemental medical report forms are titled "Cardiovascular Conditions"; "Neurological Conditions"; "Musculoskeletal Conditions"; "Metabolic Conditions"; "Alcohol or Other Drug Dependence"; "Mental and Emotional Conditions"; and "Vision Conditions". The licensed doctor of medicine or osteopathy shall determine which ones of these forms are applicable to the medical waiver applicant. Each of these forms was effective [~~adopted by the Transportation Cabinet~~] in December, 1990 and is incorporated by reference as part of this administrative regulation.

(5) The application for medical waiver, medical examination form and supplemental medical report form shall be submitted to the Transportation Cabinet, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

(6) A copy of the forms incorporated by reference may be obtained from the Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622 by writing or appearing in person. The office hours on regular Kentucky state government working days are 8 a.m. through 4:30 p.m. eastern time. [~~Copies of the forms may also be obtained from the driver license issuance office of the circuit court clerk in each county.~~]

Section 2. (1) The Division of Driver Licensing shall base its decision on granting the requested medical waiver on the information obtained from the driving history record of the applicant, the original medical examination form, the supplemental medical report form, in

some cases a skills test and any other information the Division of Driver Licensing deems pertinent.

(2) The following medical guidelines shall be considered by the Division of Driver Licensing in evaluating the information related to the commercial driver:

(a) Loss or impairment of foot, leg, arm, hand or fingers. Neither paraplegics nor quadriplegics shall be issued a medical waiver.

(b) Vision. To be considered for a medical waiver, the commercial driver's distance visual acuity shall be 20/60 (Snellen) or better with corrective lenses in one (1) or both eyes. The commercial driver's visual fields shall not be narrowed to less than 110 degrees of total visual field. The commercial driver shall readily distinguish which light of traffic signals and devices showing standard red, green and amber is illuminated. The commercial driver shall neither wear bioptic lenses nor have uncorrectable double vision.

(c) Hearing. No waiver of 49 CFR 391.41(11) shall be issued.

(d) Epilepsy or other condition likely to cause loss of consciousness. The commercial driver with epilepsy or other condition likely to cause loss of consciousness shall have been seizure free for one (1) year prior to requesting the waiver. The commercial driver shall not have experienced loss of consciousness, blackout, fainting or disorientation in the year immediately prior to requesting the waiver. The commercial driver shall be reliable in taking his prescribed medication to be considered for a medical waiver as proven by the blood content levels of his medication.

(e) Cardiovascular. The commercial driver shall not have experienced a fainting or blackout spell in the year immediately prior to requesting the waiver. The commercial driver shall have no heart disease symptoms while operating a motor vehicle or sitting at rest to be considered for a medical waiver. The commercial driver shall not have any difficulty in breathing or painful breathing. The commercial driver shall have had no uncontrollable attacks of choking, suffocation or shortness of breath during the year immediately past. The commercial driver's blood pressure shall not be irregular. The commercial driver's diastolic blood pressure shall not consistently be above 110 millimeters of mercury. The commercial driver shall not have an aortic or ventricular aneurysm. The commercial driver shall not have had any uncontrollable instances of syncope or vertigo during the year immediately prior to the application for waiver.

(f) Diabetes. The commercial driver shall neither have an uncontrolled condition of diabetes nor shall he have had any instances of diabetes shock or coma in the year immediately prior to the application for waiver.

(g) Alcohol or drugs. The commercial driver shall have been free of addiction to or abuse of alcohol or other drugs for at least one (1) year.

(h) Emotional or mental. The commercial driver shall exhibit no homicidal, suicidal or destructive behavior. The commercial driver shall have had no bouts of extreme anxiety, depression, paranoia, confusion, delusions or hallucinations within the year immediately prior to the application for waiver. The commercial driver shall not have been hospitalized for any mental or emotional condition in the three (3) years immediately prior to the application for waiver.

(3) The guidelines the Division of Driver Licensing shall follow in evaluating the information on the commercial driver's complete driving history record shall be the following:

(a) If there are three (3) or more accidents on the commercial driver's driving history record during the immediately preceding two (2) year period and the commercial driver has indicated or a court has determined them to be the fault or partial fault of the commercial driver, the waiver request may be denied.

(b) If there is an accident involving a fatality or victim incapacitation on the commercial driver's driving history record and the commercial driver has indicated or a court has determined the accident to be the fault or partial fault of the applicant, the waiver request may be denied.

~~[(c) If during the immediately prior two (2) years the commercial driver's driving privilege was withdrawn in accordance with the requirements of KRS 186.560, the application for waiver shall be denied.~~

~~(d) If during the immediately prior two (2) years the commercial driver's driving privilege was withdrawn in accordance with the provisions of 601 KAR 13:025, the application for waiver shall be denied.~~

~~(e) If during the immediately prior two (2) years the commercial driver was convicted of more than one (1) serious violation as defined in KRS 281A.010, the application for waiver may be denied.~~

~~(4) The commercial driver shall have been a commercial driver for the immediately preceding two (2) years to be considered for a medical waiver.]~~

Section 3. (1) If a commercial driver is granted a medical waiver prior to March 31, 1993 [~~1992~~], he shall submit to [~~at least annual~~] medical reexaminations as required by the Division of Driver Licensing.

(2) For the waiver to continue in effect after it has been issued, [~~1992~~] the physician performing the medical reexamination shall be able to state that the condition of the commercial driver which caused the waiver to be issued has not worsened and that no additional nonqualifying condition has manifested.

(3) The driving history record of a commercial driver approved for a medical waiver may be evaluated at any time but shall be evaluated by the Division of Driver Licensing at least once a year. If any of the events listed in Section 2(3) of this regulation occur, the medical waiver may be withdrawn.

(4) After completion of a test of the commercial driver's driving skills requested by the Division of Driver Licensing, the Kentucky State Police shall submit the test results and recommendations for waiver refusal or restrictions on a medical waiver to the Division of Driver Licensing. If a medical waiver with restrictions is issued, the restriction shall be noted on the commercial driver's motor vehicle operator's license or commercial driver's license.

(5) If an intrastate medical waiver is issued to a commercial driver, he shall notify the Division of Driver Licensing immediately of any change in or worsening of his physical or mental condition.

(6) If an intrastate medical waiver is issued to a commercial driver with a progressive disease, the Division of Driver Licensing may require the commercial driver to submit to a periodic skills test with the Kentucky State Police.

(7) If an intrastate medical waiver is issued to a person with a pacemaker, he shall submit an annual report on the functioning of the device to the Division of Driver Licensing.

(8) The commercial driver shall submit all periodic reports requested by the Division of Driver Licensing or report for a skills test in a timely manner. If he fails to do so, his medical waiver shall be cancelled.

(9) The employer of a commercial driver who has obtained a medical waiver shall notify the Division of Driver Licensing of any change in the physical or mental condition of the commercial driver. In addition, the employer shall notify the Division of Driver Licensing of any changes in employment or employment conditions of the commercial driver.

Section 4. (1) If a commercial driver is denied a medical waiver by the Division of Driver Licensing, he may appeal to the Commissioner of the Department of Vehicle Regulation. In considering the appeal, the Commissioner of the Department of Vehicle Regulation shall request from the Medical Review Board established in accordance with 601 KAR 13:010 a review of the case and recommendation on the appeal.

(2) The appeal shall be filed with the Commissioner of the Department of Vehicle Regulation in writing within thirty (30) days of the decision of the Division of Driver Licensing.

(3) A member of the Medical Review Board with specific qualifications in the medical area relating to the appeal shall review the appeal when requested by the commissioner.

(4) The commissioner's review shall be based on the information provided to the Division of Driver Licensing, the recommendation of the Medical Review Board and any additional information requested by the commissioner.

(5) The findings of the Commissioner of the Department of Vehicle Regulation shall be administratively final.

(6) The Commissioner of the Department of Vehicle Regulation shall provide a copy of his findings to both the commercial driver and the Division of Driver Licensing.

(7) A commercial driver aggrieved by the findings of the Commissioner of the Department of Vehicle Regulation may appeal to Franklin Circuit Court.

LEWIS DOTSON, Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: April 13, 1992
FILED WITH LRC: April 22, 1992 at 9 a.m.

STATEMENT OF EMERGENCY
804 KAR 9:040E

This emergency regulation amends 804 KAR 9:040 regarding special quotas for retail package liquor licenses. Madisonville, Kentucky, voted to repeal prohibition on March 10, 1992. It has been determined that the population of the city of Madisonville is sufficiently disproportionate to the population of Hopkins County to warrant a special retail package liquor license quota based upon the population of the city rather than the population of the county. Because certainty about the number of licenses to be issued is necessary and the license application process will commence before a regulation amendment would be effective, an emergency regulation is required. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed with the Regulations Compiler concurrently with this emergency regulation on April 24, 1992.

BRERETON C. JONES, Governor
DON W. STEPHENS, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control

804 KAR 9:040E. Retail package liquor license quota.

RELATES TO: KRS 241.060, 241.065, 241.075, 243.030
STATUTORY AUTHORITY: KRS 241.060
EFFECTIVE: April 24, 1992
NECESSITY AND FUNCTION: The express provisions of KRS 241.060(2) enable the Alcoholic Beverage Control Board to limit the number of licenses to be issued in any political subdivision of the state and permit the board to make reasonable division and subdivisions of the state or any political subdivision into districts for this purpose. 804 KAR 9:010 establishes a general retail liquor license quota based upon county population for any area within that county in which prohibition has been repealed. Instances may arise, however, in which the quota based on county population permits the issuance of retail liquor licenses in a number totally disproportionate to the population of the area in said county in which prohibition has been repealed. It is, therefore, necessary for the board to establish individual quotas when such a situation as above described arises.

Section 1. The Alcoholic Beverage Control Board may, for good reason shown, adopt by regulation, retail liquor license quotas for political subdivisions less than a county where the county quota established by 804 KAR 9:010 would be excessively disproportionate to that based upon the population of the smaller political subdivisions. In such instances, the quota set in Sections 1 and 2 of 804 KAR 9:010 shall be inapplicable. The quota exceptions contained in Section 2 of 804 KAR 9:010 shall remain in effect and be incorporated herein.

Section 2. Pursuant to the authority herein, the City of Pikeville, having voted to repeal prohibition on April 12, 1983, the actual resident population of the City of Pikeville being 4,756, and the resident population of Pike County being 81,123 according to the 1980 census, it is determined that the retail package liquor license quota established according to 804 KAR 9:010 would create a permissible number of retail package liquor licenses excessively disproportionate to the population of the City of Pikeville, the retail package liquor license quota for the City of Pikeville, Kentucky, is therefore set at thirteen (13).

Section 3. Pursuant to the authority herein, the city of Madisonville, having voted to repeal prohibition on March 10, 1992, the actual resident population of the city of Madisonville being 16,200, and the resident population of Hopkins County being 45,964 according to the 1992 population projections of the Urban Studies Center of the University of Louisville, it is determined that the retail package liquor license quota established according to 804 KAR 9:010 would create a permissible number of retail package liquor licenses excessively disproportionate to the population of the city of Madisonville, the retail package liquor license quota for the city of Madisonville, Kentucky, is therefore set at seven (7).

DON W. STEPHENS, Commissioner
ED HOLMES, Secretary
APPROVED BY AGENCY: April 23, 1992
FILED WITH LRC: April 24, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
810 KAR 1:024E

During the 1990-92 interim, the Administrative Regulation Review Subcommittee found the predecessor to this administrative regulation to be deficient. This current version has been revised to correct the shortcomings of the earlier version. Unfortunately, these changes were not incorporated during the 1992 Regular Session and the old regulations will expire April 15, 1992. Ordinary regulations have been filed as of noon, April 15, 1992, but without the implementation of this as an emergency, the Kentucky Racing Commission will not have any authority, as described in detail by the administrative regulations, to effectively regulate racing and wagering.

BRERETON C. JONES, Governor
WAYNE G. LYSTER, III, Chairman

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission

810 KAR 1:024E. Racing commission.

RELATES TO: KRS 230.210 et seq.
STATUTORY AUTHORITY: KRS Chapter 13A
EFFECTIVE: April 16, 1992
NECESSITY AND FUNCTION: To regulate conditions under which racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the positions and duties of the commission.

Section 1. Statutory Powers of the Commission. (1) The commission as constituted in KRS 230.220 shall be responsible as a body for the regulation of racing in Kentucky, under the terms defined in KRS Chapter 230 and other statutes pertaining to racing.

(2) Individual members of the commission may be assigned specific areas of responsibility; and, with the consent of the commission, may act with full authority of the commission in such areas.

Section 2. Commission Executive Director. The executive director of the commission shall be appointed by the Governor, for a term not to exceed four (4) years. He shall possess the powers and perform the duties imposed upon him by KRS Chapter 230 and shall perform other duties as the commission may direct.

Section 3. Administrative Staff. The following positions and duties may compose, with the executive director, the administrative staff of the commission:

(1) Senior steward in overall supervision of all commission matters pertaining to racing.

(2) State steward, responsible for all commission matters at the race meetings to which he is assigned and for other duties as may be directed.

(3) Associate steward, who may be assigned by the commission to serve under the state steward as they may direct.

(4) Public relations director, responsible for the promotion of the thoroughbred industry in Kentucky.

Section 4. Commission License Administrator. The commission may employ a person or persons who shall be responsible for processing license applications of all persons, other than associations, required to be licensed by 810 KAR 1:024 and collecting fees therefor. All license applications received by the license administrator shall be subject to approval by the licensing committee and the commission. The licensing administrator or his assistants shall:

(1) Be present on association grounds prior to the opening of a race meeting to accept license applications and shall maintain an office on association grounds to accept license applications during the race meeting;

(2) File daily reports to the commission on license applications received with accountings of fees received and forwarded to the

commission;

(3) Be responsible for the photographing of license applicants for whom same is required;

(4) Be bonded.

Section 5. Commission Supervisor of Pari-mutuel Betting. (1) The commission shall employ or designate a supervisor with accounting experience who shall be responsible for ascertaining whether the proper amounts have been paid from pari-mutuel pools to the betting public, to the association, and to the Commonwealth, by checking, auditing, and filing with the commission verified reports accounting for daily pari-mutuel handle distribution and attendance for each preceding racing day and a final report at the conclusion of each race meeting in the Commonwealth.

(2) Daily reports to the commission shall show for each race: number of horses started, number of betting interests, total money wagered in each betting pool, and refunds, if any for each day. The sum of all betting pools, and total refunds also, total pari-mutuel handle for the comparable racing day for the preceding year, and cumulative total and daily average pari-mutuel handle for the race meeting.

(3) Daily reports also shall show: amount of state pari-mutuel tax due, taxable admission, tax exempt admissions, total admissions, temperature, weather and track conditions, post time of first race, program purses, distance and conditions of each race, and any minus pools resulting with explanation.

(4) The commission supervisor of pari-mutuel betting shall submit to the commission on or before thirty (30) days after the close of each race meeting a final verified report giving in summary form a recapitulation of the daily reports for each race meeting and other information as the commission may require.

(5) The commission supervisor of pari-mutuel betting or his representative shall have access to all association books, records, and pari-mutuel equipment for checking accuracy of same.

Section 6. Commission Veterinarian. The commission shall employ a graduate veterinarian licensed in Kentucky and experienced in equine medicine and practice. He shall advise the commission and the stewards on all equine veterinary matters. The commission veterinarian's prime responsibility shall be the supervision and control of the detention area and for the collection of samples for the testing of horses for prohibited medication as outlined in 810 KAR 1:018. The commission may employ persons to assist the commission veterinarian in maintaining the detention area and collecting specimens. Except as provided in 811 KAR 1:090, Section 13(1), the commission veterinarian shall not treat, prescribe, or sell any drug supplies for any horse registered to race at any race track where he is employed, except in case of emergency; nor shall he buy or sell, for himself or another, any horse under his supervision; nor shall he be employed by or receive any compensation whether directly or indirectly from any licensed owner or trainer; nor shall he wager on a race under his supervision; nor shall he sell insurance; nor shall he be licensed to participate in racing in any other capacity.

(1) The commission veterinarian shall be responsible for inspecting and reporting all horses entered for racing soundness; maintaining and posting in the racing secretary's office a veterinary list of horses ineligible to race because of sickness or unsoundness; control of communicable equine diseases; insect control; sanitary conditions in the stable area, and shall observe and report all cruel or inhumane treatment of horses to the stewards.

(2) The commission veterinarian shall be attendant on the stewards and the racing secretary at scratch time each day, and shall examine horses as racing officials may request, and shall make reports to the racing officials as promptly as possible.

(3) A commission veterinarian shall be present in the paddock for saddling, shall inspect the horses for physical fitness, general conditions, and any unsoundness, shall accompany each field to the starting gate, and observe all horses after the finish of each. If, in the opinion of a commission veterinarian, a horse suffers an injury while in the paddock, during the post parade, or at the starting gate, which shall render the horse unfit to race, he shall recommend to the stewards that the horse be excused and placed on the veterinary list. All horses requested to be scratched for physical reasons after scratch time shall be inspected by a commission veterinarian, who shall report the condition of the horse to the stewards.

Section 7. Commission Chemist. (1) The commission may acquire, operate and maintain a testing laboratory and related facilities, for the purpose of performing tests as the commission may require. The commission chemist shall be a graduate chemist experienced in chemical testing techniques for conducting tests on urine, blood, and other specimens from thoroughbreds delivered to the commission chemist or his representative by the commission veterinarian.

(2) The commission chemist shall report to the state steward all substances he might find in his tests which are not normal in the body of the horse as outlined in 810 KAR 1:018. His duties shall be limited to these reports and need not include the possible effects on the physiology of a horse.

Section 8. Chief Investigative Officer. The commission may employ an investigator experienced in police work who shall advise the commission as to any person on association grounds, or among license applicants, whose conduct or reputation is such that the person's presence on association grounds may reflect on the honesty and integrity of thoroughbred racing or interfere with the orderly conduct of thoroughbred racing. The chief investigative officer shall:

(1) Maintain a current file on persons against whom rulings have been issued in racing jurisdictions and reported through the Association of Racing Commissioners International. The file also shall contain reports received from the U.S. Trotting Association and the Thoroughbred Racing Protective Bureau as to investigations, arrest records, and other information. The file shall also contain reports as to ejections or exclusions from association grounds in Kentucky and other racing jurisdictions.

(2) Investigate and ascertain the truth of statements made on license applications;

(3) Investigate possible infractions of racing administrative regulations at the request of the commission or stewards;

(4) Participate and cooperate with members of the track security police, Thoroughbred Racing Protective Bureau, state and local police on all other investigations pertaining to racing in the Commonwealth.

Section 9. Commission Inspector. The commission may employ a person or persons who shall be responsible for ascertaining that all persons required to be licensed under 810 KAR 1:003 have same in their possession on association grounds, and for conducting investigations on association grounds at the request of the stewards or the director of security.

Section 10. Horse Identifier. The commission may employ a person or persons who shall be responsible for the proper identification of all horses entered to be raced. A horse identifier may accompany the commission veterinarian on the prerace examination of all starters. Every starter shall be examined in the paddock by a horse identifier for sex, age, color, markings, and lip tattoo, for comparison with its registration certificate; photographs may be used as an aid in identification. If a horse identifier has any doubt as to the identity of a horse entered to be raced, the horse identifier shall so notify the paddock judge and the stewards. The horse identifier shall also be responsible for safekeeping of registration certificate and racing permits for horses, recording information required thereon, and returning same to owners at the conclusion of the race meeting.

Section 11. Investigative Powers. To ensure compliance with these administrative regulations or to investigate possible infraction of these administrative regulations, the commission and its representatives shall have free access to all offices, files, records, enclosures, property and facilities owned or possessed by associations or located on association grounds.

Section 12. Publication of Administrative Regulation Changes. All administrative regulations adopted, revised, or repealed subsequent to the publication of an administrative regulation or rule book shall be signed by the secretary and published by posting same with the effective date, in compliance with the statutes, of the change on the bulletin board in the racing secretary's office of each association, and by forwarding a copy of same to the Association of Racing Commissioners International, and to the Daily Racing Form or such publication as the commission may deem appropriate to advise the public of such changes for publication therein.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: April 14, 1992
FILED WITH LRC: April 16, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
810 KAR 1:025E

During the 1990-92 interim, the Administrative Regulation Review Subcommittee found the predecessor to this administrative regulation to be deficient. This current version has been revised to correct the shortcomings of the earlier version. Unfortunately, these changes were not incorporated during the 1992 Regular Session and the old regulations will expire April 15, 1992. Ordinary regulations have been filed as of noon, April 15, 1992, but without the implementation of this as an emergency, the Kentucky Racing Commission will not have any authority to enforce the detailed procedures for licensing all individuals in racing.

BRERETON C. JONES, Governor
WAYNE G. LYSTER, III, Chairman

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission

810 KAR 1:025E. Licensing thoroughbred racing.

RELATES TO: KRS 230.210 et seq.
STATUTORY AUTHORITY: KRS Chapter 13A
EFFECTIVE: April 16, 1992
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the licensing procedures and requirements for participation in thoroughbred racing.

Section 1. License Required. No person, legal entity, or association shall conduct any thoroughbred race for any stakes, purse, or reward in the Commonwealth without first securing a license therefor from the commission. No person shall participate in thoroughbred racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, without first securing a license therefor from the commission.

Section 2. Conditions Precedent to Issuance of License. Thoroughbred racing and participation therein in the Commonwealth shall be privileges, not rights, granted only by the commission by license, subject to the conditions precedent established in these administrative regulations. Acceptance of a license shall be construed as consent and agreement to the following conditions precedent by the licensee and failure to comply shall be grounds for immediate voidance or revocation of the license:

(1) Representations made on or with license application shall be complete and correct.

(2) Licensee shall abide by all rulings, and decisions of the stewards and all such decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal. All rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to findings of fact as occurred during and incident to the running of a race and as to determination of the extent of disqualification of horses in a race for fouls committed during the race. All such excepted rulings and decisions by the stewards shall be final with no right of review by the commission or courts.

(3) Licensee shall consent to a reasonable search of his person and property in his possession by the commission or its representatives, such property being restricted to that on association grounds and including, without limiting thereby, tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort, and licensee shall consent to seizure of any object which may be evidence indicating a violation of an administrative regulation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(4) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering. Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, blood, or other specimen taken from a horse, the trainer of the horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering.

Section 3. Standards for Granting Licenses and Racing Dates to Associations. The commission may issue a license to any association which applies for a license to conduct a thoroughbred race meeting on such days as the commission may deem appropriate, if the commission finds that the proposed conduct of racing by the association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth, and if by reason of financial stability, track location, traffic flow, facilities for the public, facilities for racing participants and horses, character and reputation for honesty of all persons identified with the association, competence of proposed racing officials and association employees, absence of conflict with other race meetings in time and patronage area, sentiment of the community in which the association proposed to conduct a race meeting, and capability to comply with the administrative regulations and rulings of the commission, the licensing of the association would serve to nurture, promote, develop, or improve the thoroughbred industry in the Commonwealth. As a condition precedent to the issuance of the license, the commission may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth under KRS 137.170, 138.480, and 138.510, together with the payment of operating expenses including purses and awards to owners of horses participating in races.

Section 4. Standards for Granting Licenses to Participants in Racing. The commission may issue a license to any person who applies for a license to participate in thoroughbred racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, if the commission finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license, are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof.

Section 5. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where applicant was denied a license or where his license was suspended or revoked;

(2) Conviction of a crime or violation of any statute or administrative regulation dealing with a controlled substance;

(3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;

(4) Making false or misleading statements to the commission or the stewards in the course of an investigation;

(5) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;

(6) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in such activity;

(7) Person less than sixteen (16) years of age;

(8) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examinations prescribed by the stewards;

(9) Intoxication, use of profanity, fighting or any conduct of a disorderly nature on association grounds;

(10) Employment or harboring of unlicensed persons required by these administrative regulations to be licensed;

(11) Discontinuance of or ineligibility for activity for which license was issued;

(12) Possession on association grounds, without written permission from the commission or stewards, of firearms, battery, buzzer, or electrical device, or other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout;

(13) Possession on association grounds by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse; or

(b) Narcotics, medication, or drugs, or substance which could be used to alter the speed of a horse in a race.

(14) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while such persons are in the discharge of their duties;

(15) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;

(16) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

(17) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;

(18) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;

(19) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, may be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized;

(20) Violation of any administrative regulation of the commission, or aiding or abetting any person in violation of any such administrative regulation.

Section 6. License Applications for Associations. Any person or legal entity desiring to conduct thoroughbred racing in the Commonwealth may apply to the commission for association license. The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. The application shall contain:

(1) Name and location of track. Initial applications shall be accompanied by other physical information as the commission may require.

(2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with such degree of ownership or type of interest shown; names and addresses of all persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary. Any corporation, partnership, or other legal entity which owns or controls a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities with such degree of ownership or type of interest thereunto pertaining. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(3) Days and hours thereof on which racing is requested to be conducted; and number of races to be run on each day.

(4) Names of racing officials and persons responsible for track security and fire protection.

(5) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any.

(6) An operating report on forms prescribed by the commission if applicant is currently licensed.

(7) Such other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct racing.

Section 7. License Application for Participants in Racing. (1) Any person other than an association required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license. The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

(2) Applications from persons not previously licensed in Kentucky shall include the names of two (2) reputable persons who shall attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.

(3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.

(4) Fingerprint identification shall be required of all licensees, unless waived by the commission. Fingerprint identification shall not be required of absentee owners and casual delivery personnel who do not enter the stable area.

(5) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of the horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(6) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky. An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not thereby be considered as participating in racing in this state.

(7) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who shall attest to the technical competence of the applicant and under whose sponsorship and direction the applicant shall work on association grounds.

(8) Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until the applicant has been administered a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.

(9) The following annual fees shall accompany the application and shall not be refundable:

(a) Thirty-five (35) dollars - owner license, trainer, assistant trainer, veterinarian, dental technician, blacksmith, farrier, or apprentice farrier license; jockey, farm manager/agent, racing official, steward, commission veterinarian, commission supervisor of pari-mutuel betting, commission director of security, commission license administrator, commission inspector, commission horse identifier; commission chemist, testing laboratory employee; racing department employee license, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer;

(b) Twenty-five (25) dollars - veterinarian assistant, stable-area supplier license (suppliers of horse feed, tack, medication, or food vendors); person employed by a concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, jockey apprentice;

(c) Forty-five (45) dollars - jockey agent;
(d) Ten (10) dollars - association employee and occupational license, valet, jockey room custodian, clerk of scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider, association security department including police chief, detectives, policemen, watchmen, firemen, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees, admission department manager and employees; concessions manager and employees, parking manager and employees; all other persons employed by the association;
(e) Five (5) dollars - stable employee license (foreman, exercise boy, groom, hotwalker, watchman, or pony boy);
(f) Twenty (20) dollars - mutuel department employee license, manager, calculator, sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee;
(g) Thirty (30) dollars - life colors.

Section 8. Licensing Committee. The commission may appoint a licensing committee including the executive director and commission steward or their designated representative. The licensing committee shall review all applications for all licenses, and forward all such applications to the commission with recommendations thereon, subject to security checks, for final action. The licensing committee may issue to a license applicant a temporary permit to participate in the activity for which license application was made pending administrative processing and final action on such license application by the commission.

Section 9. Term of License. Licenses issued by the commission for participation in racing shall be valid from the date of issuance through the calendar year shown on such license at all race meetings conducted by associations in the Commonwealth during the calendar year, unless sooner suspended, revoked, or voided. The commission may renew any license. License renewal shall not be construed to be a waiver of or to condone any violation which occurred prior to the renewal and shall not prevent subsequent proceedings against the licensee. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section 10. Possession of License Required. No person required to be licensed by these administrative regulations may participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license therefor and having the license in his possession. All licenses specified under Section 7(9)(b) to (f) of this administrative regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times.

Section 11. Applicability of Rules and Rulings to Household. Administrative regulations pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by the affected person shall in no way circumvent the intent of the administrative regulation, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.

Section 12. Notice for Discontinuance of Employment. Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities under such conditions, so notify the commission and respective interested persons or associations of his intention at least fifteen (15) days before termination. The commission shall upon notice to parties in interest conduct a hearing on the matter. If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these administrative regulations, the commission shall so advise all parties in interest and shall take appropriate action against offending parties. If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these rules, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: April 14, 1992
FILED WITH LRC: April 16, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
810 KAR 1:026E

During the 1990-92 interim, the Administrative Regulation Review Subcommittee found the predecessor to this administrative regulation to be deficient. This current version has been revised to correct the shortcomings of the earlier version. Unfortunately, these changes were not incorporated during the 1992 Regular Session and the old regulations will expire April 15, 1992. Ordinary regulations have been filed as of noon, April 15, 1992, but without the implementation of this as an emergency, the Kentucky Racing Commission will not have any authority to require standards for associations conducting racing.

BRERETON C. JONES, Governor
WAYNE G. LYSTER, III, Chairman

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission

810 KAR 1:026E. Racing associations.

RELATES TO: KRS 230.210 et seq.
STATUTORY AUTHORITY: KRS Chapter 13A
EFFECTIVE: April 16, 1992
NECESSITY AND FUNCTION: To regulate conditions under which racing shall be conducted in Kentucky. The function of this administrative regulation outlines the requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track. Each association shall at all times maintain its grounds and facilities so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance; with special consideration for the health and safety of horses there stabled, exercising, or entered to race; and shall have available adequate and proper implements to maintain a uniform track, weather conditions permitting.

Section 2. Results Boards, Totalizators Required. Each association shall provide and maintain mechanically operated totalizators and electronic boards showing odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. Each association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip. Each association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use, and each association shall provide for periodic inspections of the gates.

Section 4. Stabling. Each association shall be responsible for providing and maintaining fire-resistant barns and stalls in good repair, and in a clean, and sanitary condition. Each barn and each stall shall be numbered in consecutive order for ready ascertainment of location and identification and adequate drainage therefor shall be maintained. The racing commission shall submit to the racing secretary prior to the opening of each race meeting a list of locations of approved off-track stabling facilities from which horses may be permitted to race. The locations shall be considered for purposes of these administrative regulations "association grounds."

Section 5. Stands for Officials. Each association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials. The stands and location shall be

approved by the commission. Patrol judge stands shall be constructed so the floor shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. Each association shall cause quarter poles to be painted red and white, eighth poles to be painted green and white, and 16th poles to be painted black and white.

Section 7. Lighting. Each association shall provide and maintain flood lights so as to insure adequate illumination in the stable area and parking area. Adequacy of track lighting for night racing shall be determined by the commission.

Section 8. Facilities for Stable Employees. Each association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities, which shall include showers, toilets, and wash basins for stable employees. No personnel shall be permitted to sleep in any stall or barn loft.

Section 9. Facilities for Jockeys. Each association shall provide and maintain adequate facilities for jockeys scheduled to ride each day. The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, snack bar, and other accommodations as requested by the clerk of scales.

Section 10. Facilities for Commission. Each association shall provide adequate office space for the commission on association grounds and shall make available to the commission, and mark accordingly, a season box of six (6) to eight (8) seats and appropriate parking places for use of the commission throughout each racing day. Each association shall honor for access to preferred parking facilities and all other areas on association grounds any ring, lapel button, or automobile emblem issued or designated as approved at any time by the commission, or by the Association of Racing Commissioners International.

Section 11. Sanitary Facilities for Patrons. Each association shall, on every racing day, provide adequate and sanitary toilets and wash rooms, and furnish free drinking water for patrons and persons having business at the association.

Section 12. Manure Removal. Each association shall provide and maintain adequate manure pits of the size and construction to handle refuse from stalls. The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras. Each association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races; one (1) camera to be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges prints of all finishes as may be requested and in such number as may be required for public posting. The association shall maintain a one (1) year file of all photo finishes.

Section 14. Patrol Films or Video Tapes. Each association shall at all times during a race meeting provide and maintain personnel and equipment necessary to produce adequate motion pictures or video tapes and record each race from start to finish.

(1) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(2) Films and video tapes, shall be retained and secured by the association for not less than one (1) year and shall be available at all times to the commission and stewards. Each visual record of a race involving any questions, dispute, or controversy shall be filed with the commission upon order of the stewards.

(3) Films, and video tapes, shall be made available for viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed, and to members of the press.

Section 15. Ambulances. Each association shall provide and maintain at least one (1) man-ambulance and at least one (1) horse-ambulance during times horses are permitted to exercise or race. The ambulances shall be equipped, manned, and ready for immediate duty, and shall be located at an entrance to the racing strip.

Section 16. First Aid Room. Each association shall equip and maintain adequate first aid facilities with not less than two (2) beds and attendance of a competent physician and registered nurse during race hours unless the association can transport injured individuals to a fully-equipped hospital emergency room in five (5) minutes or less in an ambulance manned by a certified paramedic and certified emergency medical technician. The ambulance shall be on standby on association premises during race hours. In the absence of a competent physician, paramedics shall be equipped, at a minimum, with the following equipment: heart monitor and defibrillator, cellular phone, and airways intubation equipment.

Section 17. Track Kitchen. Each association shall provide adequate eating facilities within the stable area, maintained in a clean and sanitary manner at all times horses are stabled on association grounds.

Section 18. Communication System. Each association shall install and maintain in good working service communication system between the stewards' stand and patrol judges, parimutuel department, starting gate, public address announcer, and clerk of the scales.

Section 19. Fire Prevention. Each association shall be responsible for maintaining an adequate program for fire prevention and fire suppression. Each association within fifteen (15) days before commencement of a race meeting shall be inspected by the state or local fire marshal whose certification that the association plant and stable area meet fire safety requirements is necessary for the commission to approve commencement of the race meeting. Each association shall maintain a firefighting unit of trained personnel equipped with high-expansion foam fire extinguishers and other equipment as may be recommended by the local fire inspection authority. Each association shall prohibit:

(1) Smoking in stalls, under shed rows, and in feed rooms;
(2) Open fires, oil or gas lamps in stable area; and
(3) Locking of stalls occupied by horses.

Section 20. Association Police. Each association shall provide and maintain competent police and watchman services, night and day, in and about association grounds, and shall furnish daily to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by any person on association grounds.

Section 21. Security. Each association shall cause to be excluded from association grounds all persons designated by order of the commission or stewards to be excluded. Each association shall take measures to maintain security of horses on association grounds so as to protect from injury due to frightening of or tampering with said horses. Each association shall exclude from the paddock area, race strip, and winner's entrance all persons who have no immediate connection with the horses entered except members of the commission, racing officials, and duly accredited members of the news media.

Section 22. Vendors and Suppliers. Each association shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who have entry to the stable area. No association by virtue of this section shall attempt to control or monopolize proper selling to owners, trainers, or stable employees, nor shall an association grant a concession to any vendor of feed, racing supplies, or racing services. Every vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including any new preparation or medication. No association shall permit the sale of any alcoholic beverage, beer excepted, within the stable area.

Section 23. Ejection or Exclusion From Association Grounds. (1) Exclusion from racing association grounds shall not be based upon race, creed, color, sex, or national origin.

(2) Associations shall eject or exclude from association grounds all persons believed to be engaged in a bookmaking activity or solicitation of bets or touting, and a report thereof shall be submitted promptly to the commission, to the stewards, and to the local police. Associations shall eject or exclude from association grounds all

persons who as a business or for any compensation, shall, directly or indirectly, accept any thing of value to be wagered or to be transmitted or delivered for wager to any pari-mutuel wagering enterprise, or participate in any such transmission.

(3) Associations shall eject or exclude from the stable areas on association grounds all persons, except those whose presence in the stable area is authorized as:

(a) Persons licensed to conduct an activity, the conduct of which requires the presence of the licensee in the stable area;

(b) Duly accredited members of the news media;

(c) Guests of licensed owner or licensed trainer physically in the company of the owner or trainer;

(d) Persons physically in the company of and under the control and supervision of a racing official, association security guard, association public relations department representative.

(4) Reports of all ejections or exclusions from association grounds for any reason shall be made immediately to the commission and the stewards. The reports shall state the name of all persons and circumstances.

Section 24. Ownership of Associations. Each association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:025, Section 6(2), immediately upon transfer of any beneficial interest or control in the association as from time to time may occur.

Section 25. Plan of Association Grounds. Each association shall file with the commission existing maps and plans of association grounds, showing all structures, piping, fire hydrants, fixed equipment, racing strip, noting elevation as filled, drained, and gapped, and composition of track base and cushion. Each association shall file revised maps or plans of association grounds upon any material change as may occur from time to time.

Section 26. Attendance Report. (1) In addition to filing with the commission a copy of the report required by KRS 138.480 to be filed with the Department of Revenue on admission taxes, each association shall file with the commission daily attendance reports showing a turnstile count of all persons admitted to association grounds where pari-mutuel wagering is conducted. The attendance report shall indicate the daily number of paid admissions, taxed complimentary admissions, and tax exempt admissions.

(2) On request from the commission, each association shall file with the commission a current badge list showing the names of all persons issued tax exempt admission credentials.

(3) Tax exempt admission credentials shall not be transferable and associations shall exclude or eject from association grounds any person attempting to use tax exempt admissions credentials not issued to him by the association.

Section 27. Financial Report. In addition to filing with the commission copies of reports required by KRS 137.180 and 138.530 to be filed with the Department of Revenue on pari-mutuel and license taxes, each association shall furnish to the commission within sixty (60) days after the close of its fiscal year three (3) copies of its balance sheet and operating statement for the fiscal year along with a comparison to the prior year, which shall be duly sworn to by the treasurer of the association and certified by a licensed certified public accountant. The financial report shall be in a form as may be prescribed from time to time by the commission.

Section 28. Horseman's Bookkeeper. (1) Each association shall maintain a separate bank account, to be known as the "horsemen's account", with at all times sufficient funds in the account to pay all money owing to horsemen in regard to purses, stakes, rewards, claims, and deposits. Withdrawals from this account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of the account shall be bonded.

(2) All portions of purse money shall be made available to earners thereof within forty-eight (48) hours, dark days excluded after the result of the race in which the money was earned has been declared official; except, however, when the stewards shall order money withheld until final adjudication of a dispute determining which persons are entitled to the money in dispute.

(3) No portion of purse money other than jockey fees shall be deducted by the association for itself or for another, unless so requested in writing by the person to whom the purse monies are payable, or his duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting such owner's racing account at the close of each race meeting.

Section 29. Outriders. Each thoroughbred association shall employ at least two (2) outriders to escort starters to the post and to assist in the returning of all horses to the unsaddling area. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse which might cause injury to a jockey or others. Each association shall provide traditional wearing apparel. Outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times horses are permitted on the racing strip for exercising or racing. All persons exercising horses during training hours, or accompanying horses to the starting gate during racing hours shall wear a protective helmet. The term "exercising" includes breezing, galloping, or ponying horses.

Section 30. Valets. Each thoroughbred association shall employ a sufficient number of persons licensed as valets to attend each individual rider on a day's racing program. The valets shall be under the immediate supervision and control of the clerk of scales. No rider shall employ a valet or be attended by any person other than the valet assigned to him by the clerk of scales. No valet shall be assigned to the same rider for more than two (2) consecutive racing days. Valets shall be responsible for the care and cleaning up of his assigned riders apparel and equipment; shall insure his rider has the proper equipment and colors for each race; shall present the proper equipment and attend the saddling of his rider's mount; and shall attend the weighing out of his rider. No valet or other jockey room attendant may place a wager for himself or another, directly or indirectly, on races run while he is serving as a valet. Each association shall provide uniform attire for valets who shall wear same at all times while performing their duties within public view.

Section 31. Minimum Purse and Stakes Values. No thoroughbred association shall program or run any race the purse for which is less than $2,000 in cash without special permission of the commission. No thoroughbred association shall program or run any stakes race the added value of which is less than $10,000 in cash added by the association to stakes fees paid by owners. The minimum cash amounts paid by the association shall be exclusive of nomination, eligibility, entrance, and starting fees, and exclusive of other cash awards, premiums, prizes, or objects of value.

Section 32. Maximum Number of Races. No association shall program or run more than nine (9) races on any single racing day without special permission of the commission.

Section 33. Two (2) Year Old Races. Beginning on March 1 of each year, each thoroughbred association shall program in the conditions book at least four (4) two (2) year old races each week.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: April 14, 1992
FILED WITH LRC: April 16, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
810 KAR 1:027E

During the 1990-92 interim, the Administrative Regulation Review Subcommittee found the predecessor to this administrative regulation to be deficient. This current version has been revised to correct the shortcomings of the earlier version. Unfortunately, these changes were not incorporated during the 1992 Regular Session and the old regulations will expire April 15, 1992. Ordinary regulations have been filed as of noon, April 15, 1992, but without the implementation of this as an emergency, the Kentucky Racing Commission will not have any authority to prescribe the procedures for entering, declaring, or subscribing a horse.

BRERETON C. JONES, Governor
WAYNE G. LYSTER, III, Chairman

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission

810 KAR 1:027E. Entries, subscriptions and declarations.

RELATES TO: KRS 230.210 et seq.
STATUTORY AUTHORITY: KRS 230.260
EFFECTIVE: April 16, 1992
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline requirements for entry, subscription and declaration of thoroughbred horses in order to race.

Section 1. Definitions. (1) "Declaration" means the withdrawal of a horse from a race, before closing, by the owner, trainer, or person deputized by either.

(2) "Scratch" means withdrawal of a horse entered from a race, after closing, by the owner, trainer, or person deputized by either.

Section 2. Entering Required. No horse shall be qualified to start in any race unless it has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be filed with the racing secretary and shall not be considered as having been made until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of same for a period of one (1) year.

(2) An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary under these administrative regulations and made by the owner, trainer, or a licensed authorized agent of the owner or trainer.

(3) An entry shall be in writing, except that an entry may be made by telephone to the racing secretary. Telephone entries shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate.

(a) No horse shall race, unless correctly identified to the satisfaction of the stewards as being a horse duly entered.

(b) Establishing identity of a horse shall be the responsibility of its owner and of any other person seeking to identify it. All such persons shall be subject to appropriate disciplinary action for incorrect identification.

(c) An entry shall clearly state all medications, drugs, or substances which the horse shall receive as prerace treatment. Medications, drugs, or substances shall be categorized into two (2) sections and shall be designated as follows: nonsteroidal anti-inflammatory drug shall be designated by (B); and all bleeder medications shall be designated by (L). Horses racing for the first time with either of the above categories shall be clearly designated with (1).

(5) No alteration, except an error corrected with the permission of the stewards, shall be made in an entry after the closing of entries.

(6) No horse shall be entered in two (2) races to be run on the same day.

(7) A horse which has not started in the past ninety (90) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting. If a horse has done the requisite workout, but through no fault of the trainer, the workout does not appear in the past performances, it shall be permitted to start and the correct workout shall be publicly displayed on the bulletin boards where photo finishes are shown at least fifteen (15) minutes prior to the first race and for the duration of the day's racing. The workouts shall be displayed on the television monitors and tote board for fifteen (15) minutes prior to the first race. A horse which has never started shall not be entered until the trainer has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

Section 4. Stabling Requirement. No entry shall be accepted for any horse not stabled on association grounds where the race is to be run, unless its stabling elsewhere has been approved by the commission in its approved off-track stable list.

Section 5. Limitation as to Spouses. No entry in a race shall be accepted for a horse owned wholly or in part by, or trained by, a person whose spouse is under license suspension at time of the entry. If the license of a jockey has been suspended for a routine riding offense, the stewards may waive the application of this section as to the duly licensed spouse of the suspended jockey.

Section 6. Mutuel Entries. (1) Horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest; except as provided in subsection (5) of this section.

(2) Horses entered in the same race and owned wholly, or in part by the same owner or spouse thereof, shall be joined as a mutuel entry and single betting interest.

(3) No more than two (2) horses having common ties through ownership or training to be joined as a mutuel entry shall be entered in a purse race. When making a double entry of horses owned wholly, or in part by the same owner or spouse thereof, a preference for one (1) of the horses shall be made.

(4) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single interest. In purse races where the number of starters is limited to ten (10) or less, two (2) horses having common ties through training shall not start to the exclusion of a single entry.

(5) In thoroughbred stakes races with added money of $100,000 or more, permission may be granted by the commission to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners.

Section 7. Subscriptions. (1) Any subscriber to a stakes race may transfer or declare a subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry when the horse is eligible, shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry thereunder. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, or sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter it, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 8. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races. If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time. If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

(2) If the hour of closing is not specified for stakes races, subscriptions and declarations may be accepted until midnight of the day of closing provided, they are received in time for compliance with every other condition of the race.

(3) Entries which have closed shall be complied without delay by the racing secretary and along with declarations, shall be posted.

Section 9. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of

starting positions afforded by the association starting gate and extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, may be afforded a fair and equal start.

(2) At tracks measuring less than a mile in circumference, no more than ten (10) horses shall start in any race without consent of the stewards, and no more than twelve (12) horses shall start without approval of the commission.

(3) A claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered shall be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered shall be run.

(4) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (3) of this section to be run, the association may cancel or declare off the race. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary not later than 1 p.m. the same day.

Section 10. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before such races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made, and in the absence of specific prohibition by such conditions:

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates such coupling of horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, or sex, or both.

(c) Entries for any split race not divided by any method provided in this administrative regulation, shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of such split race.

Section 11. Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for the race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for the split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two (2) or more horses joined as a single betting interest.

Section 12. Also-eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 9 of this regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, a new drawing shall be taken as to horses on the also-eligible list. The starting and post position of horses drawn from the also-eligible list shall be determined by the sequence draw, unless otherwise stipulated in the published conditions of the race.

(3) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(4) If entries are closed two (2) racing days prior to the running of a race, a horse on an also-eligible list that has been drawn into a race as a starter for the succeeding day, shall not be permitted to run in the race for which it had been listed as also-eligible.

Section 13. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because they were eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(2) No preference shall be given a horse otherwise eligible for a race if it also is entered for a race on the succeeding day.

Section 14. Arrears. Unless approved by the racing secretary, no horse shall be entered or raced unless its owner has paid all stakes fees owed.

Section 15. Declarations. Declarations shall be made in the same form, time, and procedure as required for the making of entries. Declarations shall be irrevocable. No declaration fee shall be required by any licensed association.

Section 16. Scratches. Scratches shall be irrevocable and shall be permitted under the following conditions:

(1)(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the race preceding the stakes race by filing written notification of an intention to scratch with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made.

(b) If a list of also-eligibles has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be excused without a valid physical reason.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary, or his assistant, at or before the time conspicuously posted as "scratch time." A scratch of one (1) horse coupled in a mutuel entry in a purse race shall be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. If:

(a) Horses representing more than ten (10) betting interests in either of the two (2) daily double races; or

(b) Horses representing more than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, owners or trainers may be permitted at scratch time to scratch horses without physical excuses. Scratches down to respective minimum numbers for the races may be made. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) Entry of a horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days after it was scratched or excused.

Section 17. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or such publication as the commission may deem appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: April 14, 1992
FILED WITH LRC: April 16, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
810 KAR 1:028E

During the 1990-92 interim, the Administrative Regulation Review Subcommittee found the predecessor to this administrative regulation to be deficient. This current version has been revised to correct the shortcomings of the earlier version. Unfortunately, these changes were not incorporated during the 1992 Regular Session and the old regulations will expire April 15, 1992. Ordinary regulations have been

filed as of noon, April 15, 1992, but without the implementation of this as an emergency, the Kentucky Racing Commission will not have any authority to effect disciplinary actions for violations of statutes and administrative regulations.

BRERETON C. JONES, Governor
WAYNE G. LYSTER, III, Chairman

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission

810 KAR 1:028E. Disciplinary measures.

RELATES TO: KRS 230.210 et seq.
STATUTORY AUTHORITY: KRS Chapter 13A
EFFECTIVE: April 16, 1992
NECESSITY AND FUNCTION: To regulate conditions under which racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the disciplinary powers of the stewards and commission.

Section 1. Disciplinary Measures by Stewards. Upon the finding of a violation of these administrative regulations, or an attempted violation, on association grounds during the conduct of a meeting at which the stewards have been appointed to serve, the stewards may:

(1) Declare ineligible for racing or disqualify in a race any thoroughbred as provided for under 810 KAR 1:012 and 1:016. Declare ineligible for racing or disqualify any licensed person in violation of 810 KAR 1:025, Section 5 or in violation of any other regulation contained in Chapter 810 or 811 of the Kentucky Administrative Regulations;

(2) Suspend the license of any person involved in a violation of an administrative regulation for a period of time not less than five (5) nor more than 365 days as may be deemed appropriate by the stewards in keeping with the seriousness of the violation;

(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of, the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing, to be excluded or ejected from association grounds or any portion of association grounds; and

(4) In the case of a license suspension, the stewards may fix in the alternative a forfeiture not to exceed $1,000, which sum the licensee may, if he so chooses, pay to the commission in lieu of such imposed license suspension.

Section 2. Disciplinary Measures by Commission. Upon the finding of a violation of these rules or an attempted violation on any association grounds during the conduct of a race meeting in the Commonwealth, the commission may:

(1) Declare ineligible for racing or disqualify in a race any thoroughbred or any licensed person found to be in violation of 810 KAR 1:025, Section 5 or in violation of any other regulation contained in Chapter 810 or 811 of the Kentucky Administrative Regulations;

(2) Deny, suspend, revoke, or declare void the license of any person involved in a violation of an administrative regulation for a period of time not less than five (5) nor more than 365 days as may deemed appropriate by the commission in keeping with the seriousness of the violation;

(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting or any person whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing, to be excluded or ejected from association grounds for any length of time the commission may deem the presence of the person remains inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing in the Commonwealth;

(4) Upon appeal and hearing de novo of a matter determined by the stewards, the commission may reverse or revise such stewards ruling in all respects; except as to findings of fact by the stewards' regarding matters that occurred during an incident to the running of a race and as to the extent of disqualification fixed by the stewards for a foul in a race; and

(5) In lieu of a license suspension or revocation, the commission may set a forfeiture in any amount, which the licensee may pay to the commission in lieu of the imposed license suspension or revocation. The forfeitures paid to the commission in lieu of shall not accrue to the personal benefit of any commissioner or steward(s).

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: April 14, 1992
FILED WITH LRC: April 16, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
810 KAR 1:029E

During the 1990-92 interim, the Administrative Regulation Review Subcommittee found the predecessor to this administrative regulation to be deficient. This current version has been revised to correct the shortcomings of the earlier version. Unfortunately, these changes were not incorporated during the 1992 Regular Session and the old regulations will expire April 15, 1992. Ordinary regulations have been filed as of noon, April 15, 1992, but without the implementation of this as an emergency, the Kentucky Racing Commission will not have any authority to conduct a hearing as a result of a violation of any statute or administrative regulation.

BRERETON C. JONES, Governor
WAYNE G. LYSTER, III, Chairman

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission

810 KAR 1:029E. Hearings, reviews and appeals.

RELATES TO: KRS 230.210 et seq.
STATUTORY AUTHORITY: KRS 230.240
EFFECTIVE: April 16, 1992
NECESSITY AND FUNCTION: To regulate conditions under which racing shall be conducted in Kentucky. The function of this administrative regulation outlines the procedures and requirements relating to hearings, reviews, and appeals.

Section 1. Stewards' Hearing. (1) Before holding any stewards' hearing provided for under these administrative regulations, notice in writing shall be given to any party charged with a violation other than a routine riding offense occurring in a race unless waived in writing by the person charged.

(2) The notice required by Section 2(1) of this administrative regulation shall:

(a) Notify the party of the specific statute or administrative regulation the infraction for which he is charged, and a brief statement of the facts supporting the charge.

(b) State the time and place of hearing.

(c) State that the party charged may be represented by legal counsel, or by a representative of any racing trade organization of which he is a member.

(3) All stewards' hearings shall be closed and the stewards shall cause no public announcement to be made concerning a matter under investigation until conclusion of the hearing, and the party charged has been notified of the decision.

(4) The state steward shall conduct the hearing in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

(5) All testimony shall be given under oath and a record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript. The party charged with the violation may, however, waive the recording and the transcription of the testimony. The stewards shall not be required to receive testimony under oath in cases where their ruling is based solely upon a review of the video tapes of a race.

(6) If, at the conclusion of the hearing the stewards shall find that a statute or an administrative regulation has been violated, they shall promptly issue a written ruling which sets forth the full name of every person charged with the violation; identification of the persons, if licensed, by license classification and address; the statute or administrative regulation number and pertinent parts of the statute or administrative regulation violated, the finding by the stewards as to

the violation of the statute or administrative regulation, and the penalty affixed by the stewards. Copies of the rulings shall be delivered to each party in interest, delivered to the commission, posted in the racing secretary's office, and forwarded to the office of the Association of Racing Commissioners International.

(7) At least the state steward and one (1) association steward shall be present at all times at the hearing.

(8) Review and appeal. Any party who is the subject of any order or ruling of the stewards may apply to the commission for a review of the stewards' order or ruling, except as to extent of disqualification for a foul in a race or as to a finding of fact as occurred during an incident to the running of a race.

(9) Application for review. An application to the commission for review of a steward's order or ruling shall be made within ten (10) days after the order or ruling is issued in writing, and shall:

(a) Be in writing and addressed to the commission secretary at the commission general office;

(b) Contain the signature of the applicant, and the address to which notices may be mailed to applicant;

(c) Set forth the order or ruling requested to be reviewed and the date thereof;

(d) Set forth the reasons for making the applications; and

(e) Request a hearing.

Section 2. Commission Hearings. Before holding any commission hearing provided for under these administrative regulations, the commission shall:

(1) Give written notice to all parties either personally or by mail. If indispensable and necessary parties propose a large class, notice shall be served upon a reasonable number thereof as representatives of the class. Notice as provided in this section shall include a statement of:

(a) Time and place of such hearing as designated by the commission and chairman. No hearing shall be less than five (5) days nor more than thirty (30) days after service of notice, unless at the request of a party and in order to provide a fair hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) Specific designation of the particular statute or administrative regulation alleged to have been violated; and

(d) A clear and concise factual statement sufficient to inform each party with reasonable definiteness of the type of acts or practices alleged to be in violation of the statute or administrative regulations promulgated thereunder. In fixing the times and places for hearings, due regard shall be had for the convenience of the parties and their representatives.

(2) The right of any party to subpoena witnesses and documentary evidence through the commission, employing the rights of discovery and use of subpoenas as would be available under the Kentucky Civil Rules of Procedure, pretrial and trial procedures also shall be governed by Kentucky Rules of Civil Procedure.

Section 3. Special Prosecutor. (1) The commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a statute or an administrative regulation violation. If the matter involves a violation and requires a proceeding of an adversary nature; the prosecutor shall be one who has had no prior participation in the matter of any kind. The commission also may request that the Attorney General, or a member of his staff other than the special prosecutor, serve as law officer for the commission to assist the presiding officer in rendering decisions of a judicial nature. The special prosecutor shall have the services of the Kentucky State Police for investigatory purposes.

(2) The commission shall: permit all parties to be represented by counsel; permit all parties to respond and present evidence and argument on all issues involved; permit all parties to examine commission memoranda and data and all other information which is or has been considered by the commission in investigating and hearing the matter or which may be offered as evidence.

(3) The commission shall administer oaths and issue subpoenas upon its own motion or when requested by an appearing party. Each party shall pay the cost of its subpoenas and the expenses of its witnesses. If a subpoena is disobeyed, any party may apply to the Franklin Circuit Court for an order requiring obeyance; failure to comply with an order from the Franklin Circuit Court shall be cause for punishment as a contempt of the court under KRS 421.110.

(4) Unless varied by the commission, the order of proof in the de novo hearing may be:

(a) Evidence presented by the prosecution as to alleged violations;

(b) Cross-examination of prosecution witnesses and redirect examination;

(c) Evidence presented by a party charged, in defense or explanation;

(d) Cross-examination of party charged and his witnesses, redirect examination;

(e) Rebuttal or other evidence, on behalf of the prosecution or any other party in interest as deemed pertinent by the presiding officer;

(f) Closing argument by party charged; and

(g) Closing argument by prosecution.

(5) The commission shall keep a record of each hearing which shall include:

(a) All pretrial and trial pleadings, motions, and interlocutory rulings;

(b) All evidence received or considered;

(c) A statement of matters officially noticed;

(d) Questions and offers of proof and rulings thereon;

(e) Proposed findings and exceptions;

(f) All commission memoranda or data submitted to the commission in connection with the commission's consideration of the case;

(g) All stenographic recordings taken and transcriptions made. Oral proceedings shall be reported stenographically upon request of any party and shall be paid for by the parties desiring copies; and

(h) Final adjudication including findings of fact, based exclusively on evidence presented at the hearing and matters officially noticed, and any decision, opinion, and ruling by the commission on the matter.

(6) The commission may take official notice of technical facts or customs or procedures common to racing, but all parties to the hearing shall be duly notified. Each party shall have an opportunity to contest facts so noticed, including commission memoranda and commission data.

(7) Members of the commission participating in the adjudication of a matter before it shall not, directly or indirectly:

(a) In connection with any issue of fact in the matter before the commission, consult with any person or party who was engaged in the investigation or prosecution of the matter before the commission, or conduct any personal investigation outside the record, without giving an opportunity for all parties to participate.

(b) In connection with any issue at law, no party or representative shall be consulted without giving all parties an opportunity to participate.

(8) The commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order, or by default.

(9) Upon conclusion of the hearing, the commission shall: take the matter under advisement, render a decision as promptly as possible, and issue a ruling in final adjudication of the matter. The final ruling shall set forth the full name of every person charged with a violation; the identification of the person, if licensed, by license classification and address; the statute or administrative regulation number and pertinent parts of the statute or administrative regulation alleged to have been violated; a separate statement of findings of fact; a separate statement of conclusions of law; a separate statement of reasons for the decisions; and penalties fixed by the commission, if any. Copies of the ruling shall be delivered to each party in interest, posted in the racing secretary's office of the association where the matter arose, and forwarded to the office of the Association of Racing Commissioners International.

Section 4. Appeal from Commission Order or Ruling. Any person or licensee aggrieved by any order or decision of the commission may appeal to the Franklin Circuit Court. The appeal shall be made within ten (10) days after the entry of the order or decision of the commission by posting and filing in the office of the Franklin Circuit Court Clerk:

(1) A bond to secure the costs of the action in a sum approved by the circuit clerk. The bond shall be secured by corporate surety approved by the Department of Insurance.

(2) An attested copy of the order or decision appealed from.

(3) An attested copy of the transcript of evidence heard by the

commission and the cost of the transcript of evidence heard by the commission. The cost of the transcript shall be borne by the appellant. Appeals from a commission order or decision shall be taken as provided in KRS 243.560 to 243.590.

Section 5. Suspensions Pending Appeal. Any person alleged to have committed a violation under Section 1 of this administrative regulation may request a stay of imposition of the steward's sanction. Pending appeal, a hearing on the request for stay shall be held within forty-eight (48) hours of the request for a stay by the commission. If the commission is not able to hold a hearing within forty-eight (48) hours, the stay shall be automatically granted. It shall be the policy of the commission to grant stays, except:

(1) In any case where a licensee is alleged to have committed a flagrant violation of the status or prescribed administrative regulations of racing which presents a clear and present danger to the immediate integrity of racing; and

(2) Wherein it is impossible for the commission to secure necessary scientific evidence or indispensable witnesses within forty-eight (48) hours, then the commission or its designated hearing officer may refuse a request for the stay of any penalty imposed, as long as a hearing is held no later than thirty (30) days from the initial steward's determination of a violation.

Section 6. Continuances. (1) All applications for continuance made prior to a hearing shall be in writing, shall set forth the reasons therefor, and shall be filed with the commission after giving notice of the application by mail or otherwise to all parties or their representative. At the time of the hearing, applications for continuance may be made orally. If requested, and in the manner prescribed by the commission, the party applying for the continuance shall substantiate the reasons contained in the application.

(2) If an application is made for continuance due to illness of an applicant, licensee, witness, or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

(3) An application for continuance of any commission hearing shall be received by the commission at least ninety-six (96) hours prior to the time fixed for a hearing. An application received by the commission within the ninety-six (96) hour period shall not be granted unless a satisfactory arrangement in writing is made with the commission for the payment of all expenses resulting from the continuance. However, the commission may waive payment of such expenses for extenuating circumstances.

(4) If the commission approves the application for continuance, the commission shall set a date for the continued hearing.

Section 7. Commission Hearing Officer. (1) Any hearing authorized or required by KRS 230.210 to 230.360 may be conducted by the commission, or may be conducted by a hearing officer appointed by the commission to serve in its place. Hearings shall be conducted in the name of the commission at any time or place designated by the chairman. The hearing officer may, in receiving evidence on behalf of the commission, make rulings affecting the competency, relevancy, and materiality of evidence to be presented and upon motions presented during the taking of evidence so as to expedite the preparation of the case. The commission may require the entire record to be certified to it for initial decision, and the hearing officer shall submit written findings of fact, conclusions of law and recommendations which shall be incorporated in and become a part of the record. In the absence of a requirement by the commission that a record be certified to it for initial decision, the hearing officer shall render a decision, and the absence of either an appeal to the commission, or a review upon motion of the commission, the hearing officer's decision shall become the decision of the commission.

(2) A hearing officer may be a full-time employee, serve by contract, or be paid upon a per diem basis in the discretion of the commission.

Section 8. Disqualification of Commission Members and Hearing Officer. A commission member or hearing officer may at any time withdraw from the proceeding if he deems himself disqualified, and upon the filing in good faith before the termination of the hearing of an affidavit of personal bias or disqualification of any member or hearing officer, the commission shall determine the matter as a part of the record and decision in the case. If a commission member or hearing officer withdraws or disqualifies himself, any other member of the commission participating in the hearing shall have the authority to complete the hearing and to participate in the decision. In cases where the hearing is conducted by the commission, members participating in the decision shall hear all the evidence, or shall read the evidence prior to making a decision thereon. At least a majority of the members of the commission shall hear all the evidence or read the record before making a final decision.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: April 14, 1992
FILED WITH LRC: April 16, 1992 at 3 p.m.

REGULATIONS AS AMENDED BY REVIEWING SUBCOMMITTEE AND PROMULGATING AGENCY

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its May 5 and 6, 1992 meeting unless otherwise specified.

FINANCE AND ADMINISTRATION CABINET
Kentucky Agricultural Finance Corporation
(As Amended)

200 KAR 18:020. Guidelines for operating loan program.

RELATES TO: KRS 247.940 through 247.994
STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 247.946(1), **(15)**
NECESSITY AND FUNCTION: KRS 247.946(1) authorizes the Kentucky Agricultural Finance Corporation to promulgate administrative regulations governing financing of agricultural loans through the Kentucky Agricultural Finance Corporation established by KRS Chapter 247. This administrative regulation establishes the operating loan program **for existing farmers who meet the criteria set forth in KRS 247.942(2)(b)**.

Section 1. Definitions. Except as provided herein, the terms used in this administrative regulation are defined in KRS 247.942.

(1) "Corporation staff" means the staff of the Office of Financial Management and Economic Analysis.

(2) "Program" means the corporation's operating loan program.

(3) "Operating loan" means a loan for the purpose of extending operating funds to applicants who qualify under KRS 247.942(2)(b).

Section 2. Eligible Lending Institution. The **lending institution** ~~[lender]~~ shall be in good standing with state and federal regulatory authorities and shall not be subject to any federal or state supervisory action.

Section 3. Eligible Applicant. (1) An applicant shall:

(a) Not have defaulted on any corporation loan or loans under other state or federal loan programs.

(b) Sign and return the application certification, "Kentucky Agricultural Finance Corporation Operating Loan Program Certification of Applicant."

(c) Be at least eighteen (18) years of age at the time the **agricultural** loan application is submitted to the **lending institution** ~~[lender]~~.

(2) "Kentucky Agricultural Finance Corporation Operating Loan Program Certification of Applicant, (January, 1992)" is incorporated by reference. A copy of this form may be inspected, obtained or copied at the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Room 261, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday between 8:30 a.m. and 4:30 p.m.

Section 4. **Agricultural** Loan Requirements. (1) The lending institution shall certify that the loan is a new agricultural loan and is not tied to any existing loan.

(2) The **agricultural** loan shall be for a term of one (1) to three (3) years and may be a fixed or variable interest rate.

(3) The **agricultural** loan shall be 100 percent collateralized, which may include purchases **made from the proceeds of** ~~[for]~~ the loan.

(4) The interest rate on the **agricultural** loan shall not exceed the prime rate published in the Wall Street Journal on the first business day of the month.

Section 5. Bank Requirements. (1) An eligible **lending institution** ~~[lender]~~ may hold up to $100,000 from the corporation for qualified loans. The lending institution shall remit to the corporation interest on the unloaned balance in an amount approved by the corporation's board.

(2) The lending institution shall assist the eligible applicant in completing the certification of applicant required by the corporation and referred to in Section 3(2) of this administrative regulation.

(3) By the fifth business day of each month, the lending institution shall report to the corporation all application requests, whether approved or denied.

Section 6. Loan Closing. (1) The lending institution shall:

(a) Completely disburse the qualified loan; and

(b) Notify the corporation immediately if delay is anticipated.

(2)(a) The lending institution shall forward **to the corporation** photocopies of any and all documentation pertaining to the loan closing including a completed copy of "Kentucky Agricultural Finance Corporation Operating Loan Program Representations of **Lending Institution** ~~[Lender]~~."

(b) "Kentucky Agricultural Finance Corporation Operating Loan Program Representations of **Lending Institution** ~~[Lender]~~, (January, 1992)" is incorporated by reference. A copy of this form may be inspected, obtained or copied at the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Room 261, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday between 8:30 a.m. and 4:30 p.m.

Section 7. Servicing. (1) The lending institution shall:

(a) Hold the **agricultural** ~~[qualified]~~ loan ~~[instruments]~~;

(b) Collect all payments of principal and interest from the applicant; and

(c) Apply a standard of loan servicing employed by prudent lenders and shall do so strictly in accordance with the corpora- tion's operating loan program requirements.

(2) The lending institution shall forward to the corporation monthly photocopies of program loan status reports.

(3) The following procedures apply to qualified loan pay- ments received in the month due:

(a) Each qualified loan payment remittance by the **lending institution** ~~[lender]~~ of the pro rata share due to the corporation on the participation shall be sent to the corporation within ten (10) days of receipt of the manner required by the loan.

(b) The statement of account shall reflect **the**:

1. ~~[The]~~ Total amount received from the applicant under the note;
2. ~~[The]~~ Interest rate paid to date;
3. ~~[The]~~ Principle paid to date;
4. ~~[The]~~ Date on which such payment was received;
5. ~~[The]~~ Pro rata share of interest due to the corporation;
6. ~~[The]~~ Pro rata share of principal due to the corporation;
7. ~~[The]~~ Total amount to be remitted to the corporation; and
8. ~~[The]~~ Remaining outstanding principal balance of the loan.

(4)(a) Prepayments or late payments shall be remitted within ten (10) days of receipt by the lending institution.

(b) Prepayment shall include payment during the month of prepayment.

Section 8. Delinquencies. (1) **The** ~~[In accordance with the lender's agreement, a]~~ lending institution shall collect or cause to be collected delinquent loan payments under the program with the same diligence exercised with respect to other loans in its portfolio.

(2) If the **agricultural** ~~[qualified]~~ loan is more than thirty (30) days past due, the lending institution shall set up a meeting to include the applicant, corporation, and the lending institution to determine:

(a) The reason for the default;

(b) Whether the reason is a temporary or permanent condition;

(c) The applicant's cooperation in correcting the delinquency; and

(d) Actions to be taken by the lending institution and corporation.

(3) The lending institution shall promptly advise the corpora- tion in writing of its recommendations for curing the default.

(4) The lending institution shall:

(a) Provide the corporation with copies of repayment agreements.

(b) Notify the corporation, in writing, when it has determined that an applicant is not able to fulfill a repayment agreement.

Section 9. 200 KAR 18:010, Guidelines for FmHA loan program,

is hereby repealed.

CHARLES BENNETT, Chairman
APPROVED BY AGENCY: February 28, 1992
FILED WITH LRC: March 6, 1992 at noon

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(As Amended)

201 KAR 1:065. Individual and firm permit [~~Annual~~] fees.

RELATES TO: KRS 325.330
STATUTORY AUTHORITY: KRS 325.240
NECESSITY AND FUNCTION: This administrative regulation describes the procedures and fees for a certified public accountant and public accounting firm to apply for and renew a permit to practice public accounting. [~~To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to the annual license fee.~~]

Section 1. Certified Public Accountant Permit. A person seeking to practice public accounting shall:

(1) Obtain a certificate in accordance with KRS 325.261 and 201 KAR 1:050.

(2) Complete and submit the "Initial Permit Application" **(1992)** or "Permit Renewal Application" **(1992)** form. These forms are incorporated by reference and may be inspected and a copy obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m. Monday through Friday.

(3) Submit a check or money order made payable to the "Kentucky State Board of Accountancy" in the amount of:

(a) Fifty (50) dollars for even numbered certificate holders issued permits in odd numbered years. This permit shall expire on July 1 of the year following the date it was issued.

(b) $100 for even numbered certificate holders issued permits in even numbered years. This permit shall expire on July 1 on the second year following the date it was issued.

(c) Fifty (50) dollars for odd numbered certificate holders issued permits in even numbered years. This permit shall expire on July 1 of the year following the date it was issued.

(d) $100 for odd numbered certificate holders issued permits in odd numbered years. This permit shall expire on July 1 on the second year following the date it was issued.

Section 2. Public Accounting Firm Permit. A partnership or professional service corporation, seeking to practice public accounting, shall initially apply for and biennially renew the permit to practice by submitting:

(1) A completed "Initial Firm Registration Application" and "Firm Renewal Application".

(2) A check made payable to the "Kentucky State Board of Accountancy" in the amount of $100; and

(3) A copy of a document from the Secretary of State's Office which affirms that the professional service corporation is registered.

Section 3. The "Initial Firm Registration Application" and "Firm Renewal Application" is incorporated by reference and may be inspected or a copy obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

[~~Section 1. Each certified public accountant, partnership or corporation in Kentucky must secure a permit from the Board of Accountancy by paying an initial fee of fifty (50) dollars. Each such certified public accountant, each public accountant, each partnership, and each corporation registered with the board shall pay to the Board of Accountancy an annual renewal fee of fifty (50) dollars on or before July 1 of each year, for his or its permit to practice public accountancy in Kentucky during the twelve (12) month period beginning on that date.~~]

JOHN A. THOMPSON, President
APPROVED BY AGENCY: March 12, 1992
FILED WITH LRC: March 13, 1992 at 10 a.m.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(As Amended)

201 KAR 1:130. Examination application procedure.

RELATES TO: KRS 325.261, 325.270
STATUTORY AUTHORITY: KRS 325.240, 325.270
NECESSITY AND FUNCTION: This administrative regulation establishes the procedures to apply for admission to the Uniform Certified Public Accountant Examination.

Section 1. First Time Examination Applicants. The applicant shall submit:

(1) A completed "Application for Admission to the CPA Examination" **(1992)** that has been signed and acknowledged before a notary public. The application is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, KY 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday;

(2) Two (2) photographs taken within ninety (90) days preceding the filing of the application, which bear the applicant's signature on the back;

(3)(a) An official transcript which evidences completion of the educational requirements specified in KRS 325.261 and 201 KAR 1:062;

(b) The official transcript shall be a document issued by an institution of higher education and stamped with the institution's certifying seal or stamp; and

(4) A fee of $125 dollars, in the form of a check or money order made payable to the "Kentucky State Board of Accountancy".

Section 2. An application for the May examination shall be filed with the board or postmarked no later than March 1st. Applications for the November examination shall be filed with the board or postmarked no later than September 1st.

Section 3. Provisional Examination Applicants. A person who expects to satisfy the educational requirements of KRS 325.261 and 201 KAR 1:062 within ninety (90) days following an administration of the examination shall be eligible to submit an application for the examination if he:

(1) Satisfies the requirements of Sections 1(1), (2), (4) and 2 of this administrative regulation;

(2) Submits a transcript of college courses completed;

(3)(a) Submits an official statement from his college or university stating that the applicant will complete the course of study required by KRS 325.261 and 201 KAR 1:062 within ninety days following the examination;

(b) The statement shall include a list of all course titles and credit hours in which the applicant is currently enrolled; and

(c) Submits a final official transcript showing completion of all educational requirements within ninety (90) days following the administration of the examination.

(d) If a provisional examination candidate fails to submit the information specified in this section, the results of his examination shall not be released.

Section 4. Upon approval by the board of the application, the applicant shall be considered an examination candidate.

Section 5. Letter of Intent to Attend the Examination. (1) The board shall mail a letter of intent with information about the dates, times and location of the next scheduled examination to candidates. The letter of intent shall be mailed to the most recent address provided by the candidate.

(2)(a) The candidate shall return the letter of intent to the board stating whether or not he will sit for the next scheduled examination.

(b) The letter of intent shall be postmarked or filed with the board no later than:

1. April 1, for the May examination; and
2. October 1, for the November examination.

(3)(a) Except as provided in paragraph (b) of this subsection, the candidate shall return the letter of intent with the examination fee.

(b) A candidate who is taking the examination for the first time

shall submit the examination fee with his application.

(c) Except as provided in paragraph (d) of this subsection, the examination fee shall be twenty-five (25) dollars per subject.

(d) The fee for accounting practice shall be fifty (50) dollars.

(e) The examination fee shall be paid by check or money order made payable to the Kentucky State Board of Accountancy.

(4)(a) A conditional examination candidate who fails to file a letter of intent with regard to the examination shall:

1. Remain a conditional examination candidate;
2. Not be permitted to sit for the examination; and
3. Forfeit deferred examination fees.

(b) The examination, for which the conditional examination candidate fails to file a letter of intent, shall count as one (1) of the six (6) additional sittings.

(5)(a) A nonconditional candidate who fails to comply with the deadlines specified in this administrative regulation shall:

1. Not be permitted to sit for the examination;
2. Forfeit fees paid; and
3. Have his application cancelled.

(b) If an application has been cancelled under the provisions of this section, a subsequent application shall be filed as a first-time application under Section 1 of this administrative regulation.

Section 6. (1) Except as provided by subsections (2) and (3) of this section, an examination fee shall be deferred to the next scheduled examination if:

(a) The candidate has filed a:

1. Letter of intent within the period specified in Section 5 of this administrative regulation; and
2. Written request to defer the fee; and

(b) No later than five (5) days following the examination, the request specified in paragraph (a)(2) of this section has been:

1. Received by the board; or
2. Postmarked.

(2) A candidate shall be granted one (1) deferral.

(3) A candidate shall not be entitled to the refund of a deferred fee, if he fails to attend the next scheduled examination after deferral.

Section 7. (1) A person, who is registered with another state to sit for the Uniform CPA Examination, may request to sit for the examination in Kentucky if:

(a) A seat is available; and

(b) He has submitted the items specified in subsection (2) of this section on or before:

1. March 15, for the May examination; or
2. September 15, for the November examination.

(2) Items required by subsection (1) of this section are:

(a) A written request from the State Board of Accountancy of the state in which he intends to be licensed;

(b) One (1) photograph taken within ninety (90) days prior to the filing of his written request to the board;

(c) A check or money order:

1. In the amount of $100;
2. Payable to the Kentucky State Board of Accountancy; and

(d) The letter of intent required by Section 5 of this administrative regulation.

JOHN A. THOMPSON, President
APPROVED BY AGENCY: March 12, 1992
FILED WITH LRC: March 13, 1992 at 10 a.m.

GENERAL GOVERNMENT CABINET
Board of Registration for Professional Engineers and Land Surveyors
(As Amended)

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

RELATES TO: KRS 322.180, 322.190, 322.200, 322.210, 322.220, 322.250, 322.320

STATUTORY AUTHORITY: KRS 322.180, 322.190, 322.200, 322.220, 322.290

NECESSITY AND FUNCTION: Establishes procedural guidelines for board hearings and processing of informal charges, complaints and grievances as required under KRS Chapter 322.

~~[Section 1. Administrative Adjudication Procedure. This rule governs the procedure in all proceedings before the board in which the legal rights, duties or privileges of any person are required by statute or administrative regulation to be determined after an opportunity for a hearing. This procedure shall be construed to secure a just, speedy and inexpensive determination of any proceeding while insuring that the requirements of due process are observed.]~~

~~[Section 2. Definitions. (1) "Person" means any individual, partnership, corporation or association.~~

~~(2) "Board" means the State Board of Registration for Professional Engineers and Land Surveyors as provided by KRS Chapter 322.~~

~~(3) "Order" means the whole or part of any final disposition of an adjudication.~~

~~(4) "Adjudication" means the board process in which a sanction may be imposed.~~

~~(5) "Sanction" means revocation or suspension of a license, reprimand or fine.~~

~~(6) "License" means any permit, certificate, or registration granted by the board.~~

~~(7) "Hearing officer" means a licensed practicing attorney appointed by the board to hear proof and recommend findings of fact.~~

~~(8) "Probable Cause Committee" means a committee of one (1) or more present or past board members, appointed by the chairman of the board, and the executive director and legal counsel of the board.~~

~~(9) "Grievance" means a formal complaint filed by any licensee or applicant contesting a refusal of the board to:~~

~~(a) Permit an applicant to sit for an exam;~~

~~(b) Issue a license;~~

~~(c) Renew a license.]~~

Section 1. Probable Cause Committee. The board shall appoint a probable cause committee, which shall consist of a present or former member of the board, the executive director, and the legal counsel of the board.

Section **2.** ~~[3.]~~ Public Information. ~~[(1) Publication, procedure. This procedure shall be published and made available to the public for the guidance of the public.]~~

~~[(2)]~~ Publication, adjudication. From time to time, as is convenient to the board, but at least once annually, a list of all adjudications of the board shall be published, identifying the respondent and the final disposition in the matter.

~~[(3) Official record. All matters of official record in any adjudication shall be available to the public for inspection and copying except that the work product of the board investigatory staff shall not be, unless specifically made a part of the official record of an adjudication proceeding.]~~

Section **3.** ~~[4.]~~ Complaints. Complaints shall be classified as follows: formal **or** ~~[and]~~ informal.

(1) Formal complaints. Formal charges may be made by any person filing an original and two (2) copies of a complaint with the executive director at the board offices, in the general pleading form used for complaints in any civil action in Kentucky. The complaint shall contain:

(a) The name and address of any person making charges, as well as the name and address of the person or persons against whom charges are being made;

(b) A clear and concise description of the issues of fact and law involved and the statutes, rules and **administrative** regulations and sections of the Code of Professional Practice and Conduct and Standards of Practice which the party complained against is alleged to have violated;

(c) A demand for a formal hearing before the board according to the **administrative** regulation;

(d) The relief sought.

(2) Informal complaints. Information of personal knowledge of any person, which, if true, would indicate a possible violation of the registration law by a registrant or applicant, may be presented to the executive director. Upon receipt of such information, the executive director shall, without informing the board of any of the particulars:

(a) Investigate the matter, which investigation may be conducted by calling the parties involved to conference, by personally investigating the matter, or by having the matter investigated by the board staff, or any combination of these methods;

(b) Compile all relevant evidence of probative value.

Section 4. [5.] Commencement of Actions. (1) Formal complaints. Upon receipt of a formal complaint referred to in Section 4(1) of this **administration** regulation, the executive director shall transmit the complaint to the hearing officer who shall then proceed as set out in Section 6 of this **administrative** regulation.

(2) Informal complaints. Upon completion of the investigation provided for in Section 4(2) of this **administrative** regulation, the Probable Cause Committee shall evaluate the evidence developed by the investigation to determine its substantive value. Based on the decision of the Probable Cause Committee, the executive director shall then:

(a) If the informal complaint states no actionable violation of statutes, **administrative** regulations or binding rules, transmit the committee's decision to the person who filed the informal complaint, after which the complainant may proceed under Section 4(1) of this **administrative** regulation;

(b) In all other cases cause to have prepared a formal complaint as provided in Section 4(1) of this **administrative** regulation and transmit the complaint to the hearing officer, who shall proceed as set out in Section 6 of this **administrative** regulation.

Section 5. [6.] Service and Response. (1) Upon receipt of a formal complaint, the hearing officer shall cause a copy of the complaint and any attachments to be served upon the respondent at the address set out in the complaint by certified mail, return receipt requested.

(2) Not later than twenty (20) days after receipt of the complaint, as shown on a certified mail receipt, the respondent shall serve upon the hearing officer and upon the board's attorney a response admitting or denying each allegation of fact or law contained in the complaint.

(3) The complaint need not contain documents in support of the complaint, but inspection and copies of any documents to be used upon hearing shall be available to the respondent at the board's office or the office of the board's attorney not later than the date of service of the complaint upon the respondent.

(4) If the respondent fails to file a responsive pleading within the time period set out in subsection (2) of this section, the hearing officer shall notify the respondent by certified mail, return receipt requested, that at the end of seven (7) days the hearing officer shall proceed to deem the respondent in default, the complaint confessed, and make recommended findings of fact and conclusions of law to the board, unless good cause is shown why the respondent is in default.

(5) **Upon receipt of a responsive pleading, the hearing officer shall proceed to schedule a hearing on the complaint to be held not sooner than thirty (30) days nor more than sixty (60) days from the date of the respondent's reply, the hearing to be held at the office of the board.** [Upon receipt of a responsive pleading, the hearing officer shall proceed to schedule a hearing on the complaint to be held not sooner than thirty (3) days nor more than sixty (60) days from the date of respondent's reply, the hearing to take place at a time and location most convenient to all parties, in the hearing officer's discretion.]

(6) The hearing officer may continue a hearing for not more than thirty (30) days for good cause shown.

Section 6. [7.] Prehearing Procedure. Prehearing conferences. At the request of either party, prehearing conferences may be conducted by the hearing officer, who shall keep a record of any agreement as to issues, admission of facts, or stipulations. Any proposed agreement which, if accepted by the board, would settle all issues of the complaint shall:

(1) Be transmitted to the board.

(2) Not be considered to be a waiver of any defenses until accepted by the board.

(3) Be in writing and signed.

(4) Not be binding upon any of the parties until accepted by the board.

Section 7. [8.] Evidence. The respondent **shall** [should] be afforded every opportunity to defend and should not be surprised. In order to enable the respondent to defend:

(1) Board subpoenas authorized by law shall be issued to any party upon request.

(a) Prehearing disclosure of evidence.

1. By the board. The licensee or applicant shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The names, addresses and telephone numbers of witnesses expected to be called by the board **shall** [will] be made available. Copies of documentary evidence may be obtained upon the payment of a reasonable charge therefore, except documents that may not be reproduced under the provisions of state or federal law. Nothing in this section shall be construed as giving the licensee or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators nor shall it be construed as allowing access to the work product of legal counsel for the board. Further, appointment for the examination of an investigative file **shall** [must] be made upon reasonable notice, during regular office hours, and at a time convenient to all parties. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.

2. By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing and a list of the names, addresses, and home and work telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.

(b) The rules of evidence. The **hearing panel** [tribunal] shall not be bound by the technical rules of evidence. The tribunal may receive any evidence which it considers to be reliable, including testimony which **may** [would] be **considered** hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the tribunal is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody **if** [so long as] the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(3) By agreement of the parties, all or part of the evidence may be received in written form.

(4) The hearing officer may take notice of judicially cognizable facts, and notice may be taken of generally recognized technical or scientific facts, provided, however, that either party shall be afforded an opportunity to contest the facts so noticed.

Section 8. [9.] Conduct of Hearings. (1) The hearing shall be adversarial, presided over by the hearing officer, with the charges and evidence against the licensee presented by an attorney designated by the board.

(2) The respondent may appear pro se or by counsel.

(3) The hearing shall be conducted as follows: the petitioner shall present its evidence with opportunity for the respondent to cross-examine; the respondent shall present his evidence, if any, with the petitioner having the right to cross-examine; petitioner shall have the right of rebuttal.

(4) The hearing shall be officially recorded.

(5) The hearing may be continued or adjourned for reasonable cause shown.

(6) The subject matter of the hearing **may** [shall] be strictly limited to those charges set forth in the complaint. If it appears that additional subject matter should be considered, or additional charges filed, the hearing officer shall order an adjournment for an appropriate period to provide notice of those matters or charges to be communicated to the respondent and to allow reasonable time for the respondent to prepare a defense, unless the adjournment is waived by the respondent.

(7) Not later than fourteen (14) days following the hearing, the hearing officer shall make proposed findings of fact and conclusions of law based on the record, which shall be served on counsel for the

petitioner and the respondent. The proposed findings of fact and conclusions of law shall contain: judicious summary of the evidence introduced; a basis for each finding; and any legal precedent or reference to codified law which the hearing officer deems appropriate. In those instances in which the hearing officer recommends that the respondent be found guilty of the charges alleged, he shall not include any recommendation as to the nature of disciplinary action to be taken.

(8) The parties shall have fourteen (14) days from service of the proposed findings of fact and conclusions of law to file exceptions with the hearing officer.

(9) Immediately upon the close of the period for filing exceptions, the hearing officer shall transmit his proposed findings and conclusions, together with the entire record, to the executive director. Not later than fourteen (14) days prior to the next succeeding quarterly meeting of the full board, copies of the hearing officer's recommended findings of fact and conclusions of law, together with exhibits made a part of the recommended findings, together with any written exceptions filed by the parties, shall be served on each member of the board.

Section **9.** [~~10.~~] Adjudication. (1) At the next succeeding meeting of the full board, each case shall be considered by the board, and by majority vote of a quorum the board shall take one of the following actions:

(a) Adopt the hearing officer's recommendation in whole or in part;

(b) Reject the hearing officer's recommendation in whole or in part;

(c) Remand the matter back to the hearing officer to make additional findings of fact and conclusions of law, including the conducting of additional hearings.

(2) If the board finds the respondent guilty of any charge, **it shall** determine a disciplinary action.

(3) All actions by the board shall be conducted in open session, as required by law.

(4) The board's decision shall be issued in writing, signed by the chairman and executive director, and served upon all parties not later than seven (7) days following the board's decision.

Section **10.** [~~11.~~] Reconsideration. A petition to the board for vacation or reduction of the severity of a sanction imposed shall be in writing and may be submitted at any time subsequent to the issuance of **a final** [~~an~~] order **of the board**. The petition shall be a complete statement of the respondent's grounds for vacation or reduction. The petition shall be considered by the board at the next succeeding quarterly meeting and a decision issued within seven (7) days.

Section **11.** [~~12.~~] Nonregistrants. (1) Applicants for registration. Complaints related to an applicant's qualifications may be received and investigated as provided in Section 4**(1)** of this **administrative** regulation. However, if registration is denied as a result of the investigation, the applicant shall be notified of:

(a) The basis for denial;

(b) His right to a grievance hearing before the board, if he wishes to contest the matter.

(2) A grievance shall be filed with the executive director in the same manner as **formal** complaints, as set out in Section **(4)(1)** [~~5~~] of this **administrative** regulation, and hearings shall be conducted as set out in Section 6 of this **administrative** regulation.

Section **12.** [~~13.~~] Practice or Offer to Practice by Nonregistrants. Complaints related to an applicant's qualifications may be received and investigated as provided in Section 4**(1)** of this **administrative** regulation. Upon receipt of such complaint the executive director **may** [~~shall~~]:

(1) Attempt to have the complainant seek court action as provided for in KRS Chapter 322; or

(2) [~~The executive director,~~] After consultation with the Probable Cause Committee, [~~may~~] initiate court action as provided for in KRS Chapter 322.

Section **13.** [~~14.~~] Ancillary Matters. (1) Board staff. In any case involving sanction, an employee or agent directly engaged in the performance of investigative or advocacy functions for the board shall not participate or advise in the decision, recommended decision, or board review, except as witness or counsel in a public hearing.

(2) Subpoena. Any member of the board or its executive director may administer oaths and issue subpoenas for the board.

Section **14.** [~~15.~~] Repealed. 201 KAR 18:130 is hereby repealed in its entirety.

GEORGE ELY, Chairman
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: December 13, 1991 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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 **224.01-010, 224.01-100,** 224.20-100, 224.20-110, 224.20-120, **40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)** [~~224.320, 224.330, 224.340~~]

STATUTORY AUTHORITY: KRS **13A.222(4)(e),** 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) "Capital expenditure" means an expenditure for a physical or

operational change to an affected facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in Section 4 of this regulation, and the affected facility's basis, as defined by Section 1012 of the Internal Revenue Code which has been incorporated by reference in Section 4 of this regulation. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) [~~(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.

(13) [~~(12)~~] "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) [~~(13)~~] "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) [~~(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.

(16) [~~(15)~~] "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) [~~(16)~~] "District" has the meaning given it in KRS 224.01-010 [~~224.005~~].

(18) [~~(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.

(19) [~~(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.

(20) [~~(19)~~] "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) [~~(20)~~] "Existing source" means a source which is not a new source.

(22) [~~(21)~~] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) [~~(22)~~] [~~(21)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) [~~(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.

(25) [~~(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.

(26) [~~(25)~~] [~~(24)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) [~~(26)~~] [~~(25)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) [~~(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.~~]

(29) [~~(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.

(30) [~~(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. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) [~~(30)~~] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) [~~(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) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8) [~~section 111(a)(8) of the Clean Air Act~~], shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) [~~(33)~~] [~~(30)~~] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(35) [~~(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.

(36) [~~(35)~~] [~~(32)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) [~~(36)~~] [~~(33)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) [~~(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.

(39) [~~(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.

(40) [~~(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.

(41) [~~(40)~~] [~~(37)~~] "Person" means an individual, public or private

corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) [~~(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.

(43) [~~(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.

(44) [~~(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.

(45) [~~(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.

(46) [~~(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**, which have been incorporated by reference in 401 KAR 50:015**. This term may be more narrowly defined within a specific regulation or chapter.

(47) [~~(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.

(48) [~~(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.

(49) [~~(48)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) [~~(49)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) [~~(50)~~] [~~(45)~~] "Shutdown" means the cessation of an operation.

(52) [~~(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.

(53) [~~(52)~~] [~~(47)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) [~~(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.

(55) [~~(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.

(56) [~~(55)~~] [~~(50)~~] "Start-up" means the setting in operation of an affected facility.

(57) [~~(56)~~] [~~(51)~~] "State implementation plan" means the most recently prepared plan or revision required by **42 USC 7410** [~~Section 110 of the Clean Air Act~~] which has been approved by the U.S. EPA.

(58) [~~(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.

(59) [~~(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.

(60) [~~(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.

(61) [~~(60)~~] [~~(55)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) [~~(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 or carbonates; ammonium carbonate[s]; 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, 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.]~~

Section 4. Reference Material. (1) Incorporation by Reference. The following documents are incorporated by reference:

(a) Depreciation, IRS Publication 534, catalog number 150640, Department of the Treasury, Internal Revenue Service; and

(b) Section 1012, Basis of Property Cost, Income Tax-Basic Rules, Internal Revenue Code.

(2) The documents incorporated by reference in subsection (1) of this section are 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.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 50:012. General application.

RELATES TO: KRS Chapter 224, **224.20-120, 40 CFR 60.14, 42 USC 7401 et seq., 7408, 7410**
STATUTORY AUTHORITY: KRS 224.10-100[, ~~40 CFR 60.14~~] [~~224.033~~]
NECESSITY AND FUNCTION: KRS 224.10-100[, ~~40 CFR 60.14~~] [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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.
(5) For the purpose of applying the definition of modification, an increase in the amount of an air pollutant shall be determined as in 40 CFR 60.14.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 50:047. Test procedures for capture efficiency.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **42 USC 7401 et seq., 7408, 7410**
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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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) "Capture efficiency protocol" means a method for determining capture efficiency.
(5) [~~(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.
(6) [~~(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.~~]
(7) [~~(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 Measure-~~

~~ment 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) **If a determination of capture efficiency is required in order to comply with an administrative regulation in 401 KAR Chapters 50 through 63, the owner or operator of an affected facility shall submit a proposed capture efficiency protocol to the cabinet.**

(2) The cabinet shall approve the use of a proposed capture efficiency protocol if it determines that the proposed capture efficiency protocol accurately describes the capture efficiency that will be achieved at the affected facility.

(3) The cabinet shall not approve a proposed capture efficiency protocol that violates a protocol mandated by the U.S. EPA. ~~[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:~~

~~$$CE = G / (G + F_g)$$~~

~~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_g = Mass of fugitive VOC that escapes from BE. Procedure F.2 shall be used to obtain F_g.~~

~~(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:~~

~~$$CE = (L - F_g) / L$$~~

~~Where:~~

~~CE = Capture efficiency, decimal fraction.~~

~~L = Mass of liquid VOC input to process. Procedure L shall be used to obtain L.~~

~~F_g = Mass of fugitive VOC that escapes from BE. Procedure F.2 shall be used to obtain F_g.]~~

~~[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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 51:001. Definitions and abbreviations of terms used in 401 KAR Chapter 51.

RELATES TO: KRS **224.01-010,** 224.20-100, 224.20-110, 224.20-120**, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)**

STATUTORY AUTHORITY: KRS **13A.222(4)(e),** 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) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) [~~(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.

(13) [~~(12)~~] "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) [~~(13)~~] "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) [~~(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.

(16) [~~(15)~~] "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) [~~(16)~~] "District" has the meaning given it in KRS 224.01-010.

(18) [~~(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.

(19) [~~(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.

(20) [~~(19)~~] "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) [~~(20)~~] "Existing source" means a source which is not a new source.

(22) [~~(21)~~] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) [~~(22)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) [~~(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.

(25) [~~(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.

(26) [~~(25)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) [~~(26)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) [~~(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.

(29) [~~(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.

(30) [~~(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. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upsent condition or preventable equipment breakdown shall not be considered malfunctions.

(31) [~~(30)~~] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated

marginal nonattainment in 401 KAR 51:010.

(32) [~~(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) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in **42 USC 7411(a)(8)** ~~[section 111(a)(8) of the Clean Air Act]~~, shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) [~~(33)~~] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(35) [~~(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.

(36) [~~(35)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) [~~(36)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) [~~(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.

(39) [~~(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.

(40) [~~(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.

(41) [~~(40)~~] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) [~~(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.

(43) [~~(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.

(44) [~~(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.

(45) [~~(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.

(46) [~~(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**, which have been incorporated by reference in 401 KAR 50:015**. This term may be more narrowly defined within a specific regulation.

(47) [~~(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.

(48) [~~(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.

(49) [~~(48)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) [~~(49)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) [~~(50)~~] "Shutdown" means the cessation of an operation.

(52) [~~(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.

(53) [~~(52)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) [~~(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.

(55) [~~(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.

(56) [~~(55)~~] "Start-up" means the setting in operation of an affected facility.

(57) [~~(56)~~] "State implementation plan" means the most recently prepared plan or revision required by **42 USC 7410** [~~Section 110 of the Clean Air Act~~] which has been approved by the U.S. EPA.

(58) [~~(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.

(59) [~~(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.

(60) [~~(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.

(61) [~~(60)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) [~~(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 or carbonates; ammonium carbonate[~~s~~]; 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 **51** [~~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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 59:001. Definitions and abbreviations of terms used in 401 KAR Chapter 59.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 13A.222(4)(e), 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) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) [~~(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.

(13) [~~(12)~~] "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) [~~(13)~~] "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) [~~(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.

(16) "Design capacity" means the maximum rate at which a unit was designed to operate.

(17) [~~(15)~~] "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) [~~(16)~~] "District" has the meaning given it in KRS 224.01-010.

(19) [~~(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.

(20) [~~(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.

(21) [~~(19)~~] "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) [~~(20)~~] "Existing source" means a source which is not a new source.

(23) [~~(21)~~] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) [~~(22)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) [~~(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.

(26) [~~(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.

(27) [~~(25)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) [~~(26)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) [~~(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.

(30) [~~(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.

(31) [~~(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. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(32) [~~(30)~~] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(33) [~~(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.~~]

(34) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet

determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8) [~~section 111(a)(8) of the Clean Air Act~~], shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(35) [~~(33)~~] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(36) [~~(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.

(37) [~~(35)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) [~~(36)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) [~~(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.

(40) [~~(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.

(41) [~~(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.

(42) [~~(40)~~] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(43) [~~(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.

(44) [~~(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.

(45) [~~(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.

(46) [~~(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.

(47) [~~(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, **which have been incorporated by reference in 401 KAR 50:015**. This term may be more narrowly defined within a specific regulation.

(48) [~~(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.

(49) [~~(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.

(50) [~~(48)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(51) [~~(49)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) [~~(50)~~] "Shutdown" means the cessation of an operation.

(53) [~~(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.

(54) [~~(52)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) [~~(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.

(56) [~~(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.

(57) [~~(55)~~] "Start-up" means the setting in operation of an affected facility.

(58) [~~(56)~~] "State implementation plan" means the most recently prepared plan or revision required by **42 USC 7410** [~~Section 110 of the Clean Air Act~~] which has been approved by the U.S. EPA.

(59) [~~(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.

(60) [~~(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.

(61) [~~(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.

(62) [~~(60)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) [~~(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 or carbonates; ammonium carbonate[~~s~~]; 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
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 59:185. New solvent metal cleaning equipment.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 42 USC 7401 et seq., 7407, 7408, 7410 [~~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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 59:001 [~~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 operated and 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
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 59:190. New insulation of magnet wire operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410** [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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **59:001** [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 operated and 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 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 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. **40 CFR 60, Appendix A,** 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 complet-

ed 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
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 59:210. New fabric, vinyl and paper surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410** [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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **59:001** [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 operated and 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 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 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. **Appendix A to 40 CFR 60,** 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. 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.~~]

(3) [~~(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.

(4) [~~(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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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, **Appendix A to 40 CFR 60 (Method 24A), 42 USC 7401 et seq., 7407, 7408, 7410**
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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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. Those 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 **59:001** [~~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 operated and 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. **Appendix A to 40 CFR 60,** 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 these 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
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410** [~~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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 59:001 [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 vaper 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 operated and 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 those 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. Appendix A to 40 CFR 60, 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 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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410** [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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **59:001** [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.

[~~(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 vaper 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 adhesive 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 operated and 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. Appendix A to 40 CFR 60, 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 adhesive primer with VOC content equal to or less than **five and one-tenth (5.1)** ~~[six and nine tenths (6.9)]~~ lb/gal of glass adhesive 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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 59:230. New synthesized pharmaceutical product manufacturing operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **42 USC 7401 et seq., 7407, 7408, 7410** ~~[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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **59:001** ~~[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 operated and 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 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 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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 59:240. New perchloroethylene dry cleaning systems.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **42 USC 7401 et seq., 7407, 7408, 7410** [~~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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **59:001** [~~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 operated and 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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 59:315. Specific new sources.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **42 USC 7401 et seq., 7407, 7408, 7410**
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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61.

RELATES TO: KRS **224.01-010,** 224.20-100, 224.20-110, 224.20-120, **40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)**
STATUTORY AUTHORITY: KRS **13A.222(4)(e)** 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) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) [~~(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.

(13) [~~(12)~~] "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) [~~(13)~~] "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) [~~(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.

(16) "Design capacity" means the maximum rate at which a unit was designed to operated.

(17) [~~(15)~~] "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) [~~(16)~~] "District" has the meaning given it in KRS 224.01-100.

(19) [~~(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.

(20) [~~(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.

(21) [~~(19)~~] "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) [~~(20)~~] "Existing source" means a source which is not a new source.

(23) [~~(21)~~] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) [~~(22)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) [~~(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.

(26) [~~(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.

(27) [~~(25)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) [~~(26)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) [~~(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.

(30) [~~(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.

(31) [~~(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. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(32) [~~(30)~~] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(33) [~~(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.~~]

(34) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in **42 USC 7411(a)(8)** [~~section 111(a)(8) of the Clean Air Act~~], shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(35) [~~(33)~~] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(36) [~~(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.

(37) [~~(35)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) [~~(36)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) [~~(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.

(40) [(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.

(41) [~~(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.

(42) [~~(40)~~] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(43) [~~(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.

(44) [~~(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.

(45) [~~(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.

(46) [~~(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.

(47) [~~(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**, which have been incorporated by reference in 401 KAR 50:015**. This term may be more narrowly defined within a specific regulation.

(48) [~~(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.

(49) [~~(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.

(50) [~~(48)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(51) [~~(49)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) [~~(50)~~] "Shutdown" means the cessation of an operation.

(53) [~~(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.

(54) [~~(52)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) [~~(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.

(56) [~~(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.

(57) [~~(55)~~] "Start-up" means the setting in operation of an affected facility.

(58) [~~(56)~~] "State implementation plan" means the most recently prepared plan or revision required by **42 USC 7410** [~~Section 110 of the Clean Air Act~~] which has been approved by the U.S. EPA.

(59) [~~(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.

(60) [~~(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.

(61) [~~(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.

(62) [~~(60)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) [~~(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 or carbonates; ammonium carbonate[s]; 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 **61** [~~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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:050. Existing storage vessels for petroleum liquids.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **42 USC 7401 et seq., 7407, 7408, 7410** [~~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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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, 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 them in 401 KAR **61:001** [~~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) [(c)] 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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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, **42 USC 7401 et seq., 7407, 7408, 7410** [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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [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**, or one and nine-tenths (1.9) kg/l (fifteen and one-tenth (15.1) lb/gal) of solids deposited**. 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**, or one and nine-tenths (1.9) kg/l (fifteen and one-tenth (15.1) lb/gal) of solids deposited**.

(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 a weighted [~~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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:095. Existing solvent metal cleaning equipment.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120, **42 USC 7401 et seq., 7407, 7408, 7410**

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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [~~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 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 [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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:100. Existing insulation of magnet wire operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410** [~~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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [~~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. **Appendix A to 40 CFR 60,** 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 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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:105. Existing metal furniture surface coating operations.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410**

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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [~~60:010~~].

(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 [se] 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. **Appendix A to 40 CFR 60**, 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 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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:110. Existing large appliance surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410** [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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [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 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. **Appendix A to 40 CFR 60,** 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 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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410**
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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [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) 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) [(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. **Appendix A to 40 CFR 60,** 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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:122. Existing graphic arts facilities using rotogravure and flexography.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **Appendix A to 40 CFR 60 (Method 24A), 42 USC 7401 et seq., 7407, 7408, 7410** [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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [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 [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. **Appendix A to 40 CFR 60,** 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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410**
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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [~~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 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.

(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. **Appendix A to 40 CFR 60,** 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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:125. Existing can surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410** [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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [~~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. **Appendix A to 40 CFR 60,** 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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:130. Existing coil surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410** [~~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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [~~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 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. **Appendix A to 40 CFR 60,** 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 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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:132. Existing miscellaneous metal parts and products surface coating operations.

RELATES TO: KRS [Chapter] 22420-100, 224.20-110, 224.20-120, **Appendix A to 40 CFR 60 (Method 24), 42 USC 7401 et seq., 7407, 7408, 7410**

STATUTORY AUTHORITY: KRS 224.10-100 [224.033]

NECESSITY AND FUNCTION: KRS 224.10-110 [224.033] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [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 adhesive 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. **Appendix A to 40 CFR 60,** 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 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 adhesive primer with VOC content equal to or less than **five and one-tenth (5.1)** [~~six and nine-tenths (6.9)~~] lb/gal of glass adhesive 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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:137. Leaks from existing petroleum refinery

equipment.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120, **Appendix A to 40 CFR 60 (Method 21), 42 USC 7401 et seq., 7407, 7408, 7410**

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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [~~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, **Appendix A to 40 CFR 60,** 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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:150. Existing synthesized pharmaceutical product manufacturing operations.

RELATES TO: KRS [Chapter] 224.20-100, 224.20-110, 224.20-120, **42 USC 7401 et seq., 7407, 7408, 7410**

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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:155. Existing pneumatic rubber tire manufacturing plants.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120, **42 USC 7401 et seq., 7407, 7408, 7410**

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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [~~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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 61:160. Existing perchloroethylene dry cleaning systems.

RELATES TO: KRS [Chapter] 224.20-100, 224.20-110, 224.20-120, **42 USC 7401 et seq., 7407, 7408, 7410**

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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [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

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

(As Amended)

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, **Appendix A to 40 CFR 60 (Method 21), 42 USC 7410** [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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **61:001** [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, **Appendix A to 40 CFR 60,** [~~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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63.

RELATES TO: KRS **224.01-010,** 224.20-100, 224.20-110, 224.20-120**, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)**

STATUTORY AUTHORITY: KRS **13A.222(4)(e),** 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) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) [~~(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.

(13) [~~(12)~~] "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) [~~(13)~~] "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) [~~(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.

(16) [~~(15)~~] "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) [~~(16)~~] "District" has the meaning given it in KRS 224.01-010.

(18) [~~(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.

(19) [~~(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.

(20) [~~(19)~~] "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) [~~(20)~~] "Existing source" means a source which is not a new source.

(22) [~~(21)~~] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) [~~(22)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) [~~(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.

(25) [~~(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.

(26) [~~(25)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) [~~(26)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) [~~(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.

(29) [~~(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.

(30) [~~(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. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) [~~(30)~~] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) [~~(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) "Modification" means a physical change in, or change in the

method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in **42 USC 7411(a)(8)** [~~section 111(a)(8) of the Clean Air Act~~], shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) [~~(33)~~] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(35) [~~(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.

(36) [~~(35)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) [~~(36)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) [~~(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.

(39) [~~(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.

(40) [~~(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.

(41) [~~(40)~~] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(42) [~~(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.

(43) [~~(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.

(44) [~~(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.

(45) [~~(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.

(46) [~~(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**, which have been incorporated by reference in 401 KAR 50:015**. This term may be more narrowly defined within a specific regulation.

(47) [~~(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.

(48) [~~(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.

(49) [~~(48)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) [~~(49)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) [~~(50)~~] "Shutdown" means the cessation of an operation.

(52) [~~(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.

(53) [~~(52)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) [~~(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.

(55) [~~(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.

(56) [~~(55)~~] "Start-up" means the setting in operation of an affected facility.

(57) [~~(56)~~] "State implementation plan" means the most recently prepared plan or revision required by **42 USC 7410** [~~Section 110 of the Clean Air Act~~] which has been approved by the U.S. EPA.

(58) [~~(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.

(59) [~~(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.

(60) [~~(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.

(61) [~~(60)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) [~~(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 or carbonates; ammonium carbonate[~~s~~]; 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
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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 63:025. Asphalt paving operations.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120, **42 USC 7401 et seq., 7407, 7408, 7410**

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. **42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality.** 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 **63:001** [~~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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(As Amended)

702 KAR 5:010. Responsibilities of division.

RELATES TO: KRS [~~156.031,~~] 156.160, 157.370, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.370
NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;~~] KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate regulations relating to the physical welfare and safety of public school children, the transportation of such children to and from school, and the operation of school buses; and KRS 157.370 references the method of calculating transportation costs for the state public school funding program. This regulation establishes guidelines and procedures whereby the Department of Education, through its Division of Pupil Transportation answerable to the chief state school officer, may offer direct assistance to the school districts in these areas: service to the pupils, school bus safety, and economy of operation.

Section 1. The Division of Pupil Transportation shall make the calculations for pupil transportation allotment purposes for the Fund to Support Education Excellence in Kentucky which are necessary to determine the calculated pupil transportation program cost for each district which provides transportation for its pupils.

Section 2. The Division of Pupil Transportation shall be responsible for the development of a standardized school bus driver training curriculum, meeting the standards of 702 KAR 5:080, Sections 8 and 9, and shall keep the curriculum up-to- date by revision when experience indicates updating is necessary. The division shall be responsible for training and certifying instructors of the training curriculum.

Section 3. No person shall be certified to teach the school bus driver training curriculum until he or she has satisfactorily completed a minimum of twenty-five (25) hours classroom and driving instruction, conducted by the Division of Pupil Transportation and relevant to the approved driver training curriculum, and has been issued an instructor's certificate by the chief state school officer. Instructors shall be required to renew their certificates annually by completing six (6) appropriate hours of update training conducted by the division.

Section 4. The Division of Pupil Transportation shall have the authority to make safety inspections of any and all school buses and special type vehicles either owned by the board or contracted to the board being used to transport pupils to and from school, held in reserve as substitutes for this purpose, or proposed for this purpose. If any of these school buses or special type vehicles are found to be in an unsafe condition, the Division of Pupil Transportation shall have the authority to prohibit further use for the transportation of pupils until the conditions causing them to be unsafe shall have been corrected.

Section 5. The Division of Pupil Transportation shall have the authority to prohibit the use of school buses or special type vehicles used for the transportation of pupils, which have been purchased by boards of education or school bus contractors that were originally manufactured to the specifications of a state other than Kentucky. These vehicles shall remain out of service until approved by the Division of Pupil Transportation as meeting the minimum safety standards for Kentucky school buses of the same model year.

Section 6. The Division of Pupil Transportation shall have the authority to make a district pupil transportation system survey in any school district providing transportation for its pupils, or that is planning to provide transportation for its pupils.

Section 7. The Division of Pupil Transportation shall have the authority to require the superintendent of a school district to prepare or cause to be prepared: pupil transportation maps, bus route descriptions, and reports necessary for calculating the district's entitlement under the Fund to Support Education Excellence in Kentucky and the Division of Pupil Transportation in making a pupil transportation system survey for the district.

Section 8. The Division of Pupil Transportation shall be responsible for the training and **approval** [~~certification~~] of state school bus inspectors.

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: March 12, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(As Amended)

702 KAR 5:030. Superintendents' responsibilities.

RELATES TO: KRS 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320
NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate regulations relating to the safety of public school children, the transportation of such children to and from school, and the operation of school buses. This regulation provides the district superintendent with the regulations necessary to assist him in administering the district's pupil transportation programs and to provide the maximum consistency throughout the state.

Section 1. Each school district superintendent shall be responsible for the general supervision of the district's pupil transportation program. The superintendent may designate another employee or other employees of the board to assist in carrying out this responsibility. For the purpose of these regulations, the word "superintendent" shall mean the superintendent or his designate.

Section 2. The superintendent shall require that a safety inspection be made on each school bus owned and operated by the board or contracted to the board at least once each month that the district's schools are in session. This inspection shall be made by a state **approved** [~~certified~~] inspector [~~competent person~~]. If, upon inspection, a school bus is found to be in unsafe operating condition, the superintendent shall withhold the bus from operation until the required repairs are made. The superintendent shall be responsible for keeping the records of the bus safety inspections on file, and shall be responsible for certifying to the Division of Pupil Transportation at least once each month that each school bus used during that month has received the proper safety inspection.

Section 3. The superintendent shall be responsible for preparing the school bus route maps, school bus inventories, and other reports required by the Division of Pupil Transportation for the purpose of making the pupil transportation cost calculation for the Fund to Support Education Excellence in Kentucky.

Section 4. The superintendent shall be responsible for making reports on a monthly basis to the Division of Pupil Transportation on all school bus accidents that happened to the district's buses during the month.

Section 5. The superintendent shall be responsible for providing the necessary and required school bus driver training before a school bus driver shall enter into the duties of transporting pupils to and from school or events related to such schools. This training shall at least include the school bus driver course prescribed by the State Board for Elementary and Secondary Education, in accordance with 702 KAR 5:080, Sections 8 and 9 and shall be conducted by a state **approved** [~~certified~~] instructor. Evidence that the driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 6. The superintendent shall be responsible for providing the required in-service school bus driver training which each school bus driver shall complete annually for **approval** [~~certification~~] renewal, in accordance with 702 KAR 5:080, Section 9. The in-service training shall include at least eight (8) hours of required instruction conducted by **an approved** [~~a certified~~] instructor. Evidence that each driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 7. District school bus inspectors shall complete an annual four (4) hour update conducted by a state **approved** [~~certified~~] school bus inspector and instructor.

Section 8. The training required to be designated as a state approved inspector is provided in the "Pupil Transportation Management Manual", as revised January 1992, which is incorporated by reference and which is available Monday through Friday, 8 a.m. to 4:30 p.m., from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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: March 12, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

LABOR CABINET
Department for Workplace Standards
(As Amended)

803 KAR 1:063. Trading time.

RELATES TO: KRS 337.275, 337.285, **45 USC 181**
STATUTORY AUTHORITY: KRS 337.295
NECESSITY AND FUNCTION: KRS 337.295 authorizes the commissioner to issue regulations for special items usual in a particular employer-employee relationship. The function of this regulation is to define the criteria to be met by public employers who wish to permit employees engaged in fire protection activities and any employee of a carrier by air subject to the provisions of **45 USC 181** (title II of the Railway Labor Act) to use the practice of "trading time."

Section 1. A common practice or agreement among employees engaged in fire protection activities and employees of a carrier by air subject to the provisions of **45 USC 181** (title II of the Railway Labor Act) is that of substituting for one another on regularly scheduled tours of duty (or for some part thereof) in order to permit an employee to absent himself or herself from work to attend to purely personal pursuits. This practice is commonly referred to as "trading time."

Section 2. The practice of "trading time" will be deemed to have no effect on hours of work if the following criteria are met:
(1) The trading of time is done voluntarily by the employees participating in the program and not at the behest of the employer;
(2) The reason for trading time is due, not to the employer's business operations, but to the employee's desire or need to attend to personal matters; and
(3) A record is maintained by the employer of all time traded by his employees.

CAROL M. PALMORE, Secretary
APPROVED BY AGENCY: February 20, 1992
FILED WITH LRC: February 21, 1992 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(As Amended)

807 KAR 5:066. Water.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the Public Service Commission (hereinafter referred to as "commission") shall prescribe rules for the performance of any service or the furnishing of any commodity by the utility. This regulation establishes general rules which apply to water utilities.

[~~Section 1. General. The purpose of this regulation is to provide standard rules and regulations governing the service of water utilities operating under the jurisdiction of the Public Service Commission.~~]

Section 1. [~~2.~~] Definitions. (1) "Customer" means, in addition to the definition in 807 KAR 5:006, Section 1(2), a person who purchases water from a utility's water loading station.

(2) [~~(3)~~] "Distribution main" means a line from which service connections with customers are taken at frequent intervals.

[~~(3) "Fire hydrant" means an installation which a member of the public could reasonably expect to provide fire protection.~~]

(3) [~~(4)~~] [~~(1)~~] "Meter" means any device used for the purpose of measuring the quantity of water delivered by a utility to a customer.

(4) [~~(5)~~] " [~~(6) "Department for~~] Natural Resources Cabinet" means the state [~~Kentucky Department for~~] Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, [~~Bureau of Environmental Quality,~~] Division of Water [~~Sanitary Engineering~~].

(5) [~~(6)~~] "Point of service" means the outlet of a customer's water meter, or valve if no meter is placed.

(6) [~~(7)~~] [~~(5)~~] "Service connection" means the line from the main to the customer's point of service [~~property line~~], and shall include [~~all of~~] the pipe fittings and valves necessary to make the connection.

(7) [~~(8)~~] [~~(4)~~] "Service line" means the water line from the point of service [~~property line~~] to the place of consumption.

(8) [~~(9)~~] [~~(2)~~] "Transmission main" means a line which is used for conveying water to the distribution system, reservoirs, tanks or stand pipes, and has generally no service connections with customers.

Section 2. [~~3.~~] Information Available to Customers. A utility shall provide the following information to any customer upon request:

(1) Characteristics of water. A description in writing of [~~the treated water as to~~] chemical constituents and bacteriological standards of the treated water as required by the Natural Resources Cabinet.

(2) Rates. A schedule of rates for water service applicable to the service to be rendered to the customer.

(3) Reading meters. Information about method of reading meters.

(4) Bill analysis. A statement of the past readings of a customer's meter for a period of two (2) years.

Section 3. [~~4.~~] Quality of Water. [~~(1) General. Any utility furnishing water service for human consumption or for domestic uses shall provide water that is wholesome, potable, free from objectionable odors and taste, and not harmful or dangerous to public health.~~]

(1) [~~(2)~~] Compliance with [~~Department for~~] Natural Resources Cabinet. Any utility furnishing water service for human consumption or domestic use shall conform to all legal requirements of the [~~Department for~~] Natural Resources Cabinet for construction and operation of its water system as pertains to sanitation and potability of the water.

(2) [~~(3)~~] Water supply. In absence of comparable requirements of the [~~Department for~~] Natural Resources Cabinet, water supplied by any utility shall be:

(a) Adequately protected by artificial treatment to include continuous disinfection throughout the distribution system;

(b) Free from objectionable color, turbidity, taste, and odor; and

(c) From a source reasonably adequate to provide a continuous supply of water.

[~~(d) Of such quality at all times as to meet the "Public Health Service Drinking Water Standards," Revised 1962 edition, Publication No. 956, U. S. Government Printing Office, Washington, D. C. 20402; herein filed by reference.~~]

(3) [~~(4)~~] Operation of supply system.

(a) Sanitary conditions. The water supply system, including wells, reservoirs, pumping equipment, treatment works, mains, and service pipes shall be free from sanitary defects.

(b) Potable water connections. No utility shall make a physical connection between its [~~the~~] distribution system and that of any other [~~a public potable~~] water supply [~~and that of any other water supply shall be permitted,~~] unless the [~~such~~] other water supply maintains a safe sanitary quality in accordance with this regulation, and the utility provides notice to the commission prior to any such interconnections [~~of the supplies are approved by the commission~~].

(c) Algae growth. The growth of algae in [~~the~~] water at the source of supply, in reservoirs or other basins, and in [~~the~~] water mains, shall be controlled by proper treatment.

(d) Well integrity. Utilities obtaining water supplies from driven or drilled wells must maintain the tightness of well casings and provide protection at the ground surface [~~of the ground~~] to prevent [~~the~~] infiltration of water other than that from [~~the~~] strata tapped by such wells. Wells shall be a minimum of [~~and~~] 300 feet from any source of pollution.

(4) [~~(5)~~] Testing of water.

(a) Test. Each utility shall have representative samples of its water [~~supplied by it~~] examined by the appropriate state or local agency [~~department for natural resources~~] or by a competent chemist and bacteriologist skilled in the sanitary examination of water, under methods approved by the [~~State Department for~~] Natural Resources Cabinet, [~~at intervals sufficient~~] to insure a safe water supply.

(b) Report to the commission. If a utility is required by the Natural Resources Cabinet to make a public notification pursuant to regulations of the Natural Resources Cabinet, the utility shall provide the commission with a copy of the public notification when it is made. [~~In the event that the above prescribed tests show that the water furnished by the utility is contaminated or otherwise unsafe for human consumption, the utility shall forward a report of such test to the commission or other state agency having correctional jurisdiction without delay, and shall take immediate steps to correct the condition.~~]

Section 4. [~~5.~~] Continuity of Service. (1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its consumers and the general public. If [~~Where~~] an emergency interruption of service affects [~~the~~] service to any public fire protection device, the utility shall immediately notify the fire chief or other public official responsible for [~~the~~] fire protection.

(2) Scheduled interruptions. If [~~Whenever~~] any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption, stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at [~~such~~] hours of [~~as will provide~~] least inconvenience to [~~the~~] customers. If [~~Where~~] public fire protection is provided by [~~the~~] mains affected by the interruptions, the utility shall notify the fire chief or other officials responsible for fire protection of the interruption, stating the time and anticipated duration. The fire chief or other official responsible for fire protection shall be notified immediately upon restoration of service.

(3) Standby equipment. The utility shall have available standby pumps capable of providing the maximum daily pumping demand of the system for use when any pump is out of service. [~~When the system pressure is maintained by mechanical means, emergency standby pumping equipment shall be provided to maintain a reasonable pressure in the main in the event of failure of the primary pumping facilities.~~]

(4) Storage. The minimum storage capacity for systems shall be equal to the average daily consumption. [~~Each utility shall provide water storage to insure a minimum of one (1) days supply of its average daily water usage or such minimum amount deemed adequate by the commission.~~]

(5) Record of interruptions. Each utility shall keep a complete record of all interruptions on its entire system or on major divisions of that system [~~thereof~~]. This record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence.

Section 5. [~~6.~~] Pressures. (1) Standard pressure. Each utility shall, subject to the approval of the commission, adopt and maintain a standard pressure in its distribution system at locations to be designated as the point or points of "standard pressure." The selection of such points shall be confined to locations fairly representative of average conditions. In selecting points for fixed standard pressure, a utility may divide its distribution system into districts if [~~, when~~] division is necessary due to differences of elevation or loss of pressure because of friction, or [~~due to~~] both, [~~of said causes,~~] and may either adopt a standard pressure for each [~~such~~] division or [~~it may~~] establish a single standard pressure for its distribution system as a whole. In no case shall the constant difference between the highest and lowest pressures in a district for which a standard has been adopted exceed fifty (50) percent of such standard. In the interpretation of this rule it shall be understood that in districts of widely varying elevations or low customer density a utility may

undertake to furnish a service which does not comply with the foregoing specifications if the customer is fully advised of the conditions under which average service may be expected. It shall be understood that nothing shall prevent the commission from requiring improvements when, upon investigation, it appears right and proper that such betterments should be made. In no event, however, shall the pressure at the customer's service pipe under normal conditions fall below thirty (30) psig nor shall the static pressure exceed 150 psig.

(2) Pressure gauges. Each utility shall provide itself with one (1) or more recording pressure gauges to make [~~for the purpose of making~~] pressure surveys as required by these rules. These gauges shall be suitable to record the pressure experienced on the utility's system and shall be able to record a continuous twenty-four (24) hour test. One (1) of these recording pressure gauges shall be maintained for a minimum of one (1) week per month in continuous service at some representative point on the utility's mains.

(3) Pressure surveys. At least once annually, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the quality of service being rendered at representative points in its system. [~~The~~] Pressure charts for these surveys shall show the date and time of beginning and end of the test and the location at which the test was made. Records of these pressure surveys shall be maintained at the utility's principal office in Kentucky [~~the state~~] and shall be made available to the commission upon request.

Section 6. [~~7.~~] Water Supply Measurement. (1) Measuring devices. Each utility shall install a suitable measuring device at each source of supply so [~~in order~~] that a record may be maintained of the quantity of water produced by each source.

(2) Records. [~~At least once each month,~~] The quantity of water produced or purchased for resale to customers from each source of supply shall be determined on a monthly basis. The volumes of water distributed to customers and the volume used by the utility shall be determined in the same manner. Twelve (12) month totals of the volumes produced or purchased from each source of supply, distributed to customers, and used by the utility shall be recorded separately and transmitted to the commission [~~by sources shall be recorded and transmitted to the commission~~] in the utility's annual report to the commission.

(3) Unaccounted-for water loss. Except for purchased water rate adjustments for water districts and water associations, and rate adjustments pursuant to KRS 278.023(4), for rate making purposes a utility's unaccounted-for water loss shall not exceed fifteen (15) percent of total water produced and purchased, excluding water used by a utility in its own operations. Upon application by a utility in a rate case filing or by separate filing, or upon motion by the commission, an alternative level of reasonable unaccounted-for water loss may be established by the commission. A utility proposing an alternative level shall have the burden of demonstrating that the alternative level is more reasonable than the level prescribed in this section.

Section 7. [~~8.~~] Standards of Construction. [~~The~~] Design and construction of the utility's facilities [~~water plant~~] shall conform to good standard engineering practice. [~~The~~] Plans and specifications for water supplies shall be prepared by an engineer registered in [~~the State of~~] Kentucky, with the submitted plans bearing the engineer's seal. The utility's facilities [~~plant~~] shall be designed, constructed and operated so as to provide adequate and safe service to its customers and shall conform to [~~the~~] requirements of the [~~Department for~~] Natural Resources Cabinet with reference to sanitation and potability of water.

Section 8. [~~9.~~] Distribution Mains. (1) Depth of mains. Water mains shall be placed a minimum of twenty-four (24) inches below ground level and shall be protected sufficiently to prevent freezing during the coldest weather normally experienced in the community in which laid, and to prevent damage by traffic.

(2) Dead ends. In order to provide increased reliability of service and reduce head loss, dead ends shall be minimized by making appropriate tie-ins whenever practicable. Where dead ends occur they shall be provided with a fire hydrant, if flow and pressure are sufficient to meet the requirements of Section 10(2)(b) of this regulation, or with an approved flushing hydrant or blowoff for flushing purposes. Flushing devices shall be sized to provide flows which will give a velocity of at least two and one-half (2.5) feet per second in the water main being flushed. No flushing device shall be directly connected to any sewer. Mains with dead ends shall be flushed at least once each year but more often if necessary to maintain the quality of the water. [~~Insofar as practicable, the utility shall design its distribution system so as to avoid dead ends in its mains. Where dead ends are necessary, the utility shall provide hydrants or valves for the purpose of flushing the mains. Mains with dead ends shall be flushed as often as necessary to maintain the quality of the water; but in any event they shall be flushed at least once each year.~~]

(3) Segmentation of system. Valves or stopcocks shall be provided at reasonable intervals in the mains so that repairs may be made with the least possible interruption of service. [~~affected with interruptions to the service of as few customers as is practicable.~~]

(4) Disinfection of water mains. All new mains shall be thoroughly disinfected before being connected to the system. The method of disinfecting shall comply [~~be in compliance~~] with requirements of the [~~Department of~~] Natural Resources Cabinet.

(5) Grid systems. Wherever feasible the distribution system shall be laid out in a grid to facilitate identification of line location and minimize service interruptions caused by [~~so that in case of~~] breaks or repairs [~~the interruptions of service to the customers will be at a minimum~~].

Section 9. [~~10.~~] Service Lines. (1) Size of service line. The size, design, [~~and~~] material and installation of the service line shall conform to such reasonable requirements of the utility as may be incorporated in its rules and regulations. [~~, provided,~~] However, [~~that~~] the minimum size of the line shall not be less than three-fourths (3/4) inch nominal size except under unusual circumstances which shall be clearly defined.

(2) Depth of service line. All service lines shall be laid at a depth sufficient to prevent freezing during the coldest weather normally experienced except where services are not intended for use during freezing weather and are actually drained during such periods.

(3) Inspection of service line. In the installation of the [~~a~~] service line, the utility shall require the customer to [~~shall~~] leave the trench open and pipe uncovered, and the utility shall inspect the line to determine it is [~~until it is inspected by the utility and shown to be~~] free from any tee, branch connection, irregularity or defect. The utility may substitute for its inspection an inspection by the appropriate state or local plumbing inspector, if proof of that inspection is presented to the utility by the customer.

Section 10. [~~11.~~] Construction Requirements. (1) The system shall be adequate to deliver all reasonable water requirements of its customers and meet the requirements of Section 5 [~~6~~](1) of this regulation except under emergency conditions.

(2) Distribution system.

(a) Minimum pipe sizes. The distribution system shall be of adequate size and so designed in conjunction with related facilities to maintain the minimum pressures required by Sections 5 [~~6~~](1) and 7 of this regulation. The maximum length of any individual small pipe line shall be as follows:

	Circulating	Noncirculating
1 inch nominal size	150 feet	100 feet
1 1/2 inch nominal size	300 feet	200 feet
2 inch nominal size	500 feet	250 feet

In the case of rural water lines, if [~~where~~] hydraulic studies indicate they can comply with Section 5 [~~6~~](1) of this regulation and can provide adequate flow of water to serve the peak requirements of customers, the above maximum extension lengths may be extended with approval of the commission.

(b) Fire protection.

1. On or after the effective date of this administrative regulation, fire hydrants may be installed by a utility only if:

a. A professional engineer with a Kentucky registration has certified that the system can provide a minimum fire flow of 250 gallons per minute; and

b. The system supporting this flow has the capability of providing this flow for a period of not less than two (2) hours plus consumption at the maximum daily rate. [~~Fire hydrants may be installed by a utility only on six (6) inch or larger water mains and only when a professional engineer with a Kentucky registration~~

~~certifies that adequate and reliable fire flows can be obtained in conformance with good standard engineering practice.~~]

2. The [~~Specifications,~~] location, installation, and the responsibility for [~~the~~] maintenance of fire hydrants, public and private fire protection facilities, connecting mains, and their ownership may be subject to negotiation between the utility and the applicant. Fire hydrants and public and private fire protection facilities shall be installed as required by the utility and if [~~when~~] owned by the utility shall be subject to any [~~such~~] conditions [~~as~~] the commission may impose, based upon the compensation received for this service.

(3) Transmission systems. [~~The~~] Transmission pipe lines from sources of supply shall be designed to deliver in combination with related storage facilities and to the limits of the capacity of those sources of supply the maximum requirements of that portion of the system which is dependent upon such transmission pipe lines.

(4) Water supply requirements. The quantity of water delivered to the utility's distribution system from all source facilities shall be sufficient to supply adequately, dependably and safely the total reasonable requirements of its customers under maximum consumption[~~, and shall be determined so as to maintain the specified pressures as required by Section 6(1) of this regulation~~].

(5) Materials. Metallic and nonmetallic materials may be used separately and in combination to construct component parts of a water system including, but not limited to, conduits, pipes, couplings, caulking materials, protective linings and coatings, services, valves, hydrants, pumps, tanks and reservoirs, provided:

(a) The material shall have a reasonable useful service life.

(b) The material shall be capable of withstanding with ample safety factors the internal and external forces to which it may be subjected in service.

(c) The material shall not cause the deterioration of the potability of the water supply.

(d) Materials and equipment shall be so selected as to mitigate corrosion, electrolysis and deterioration.

Section 11. [~~12.~~] Extension of Service. (1) Normal extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more [~~and provides a guarantee for such service~~].

(2) Other extensions.

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer who paid for [~~receiving~~] service under such extension shall [~~will~~] be reimbursed under one (1) of the following plans, which shall be included in the utility's filed tariff:

1. Each year, for a refund period of not less than ten (10) years, [~~which for the purpose of this rule shall be the refund period,~~] the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom. [~~, but in no case shall the~~] Total amount refunded shall not exceed the amount paid the utility. [~~After the end of the refund period,~~] No refund shall [~~will be required to~~] be made after the refund period ends.

2. As an alternative to the refund plan outlined in subparagraph 1 of this paragraph, the utility may use the following plan: for a period of five (5) years after construction of the extension, each additional customer whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom, shall be required to contribute to the cost of the extension based on a recomputation of both the utility's portion of the total cost and the amount contributed by the customers. The utility shall refund to those customers that have previously contributed to the cost of the extension that amount necessary to reduce their contribution to the currently calculated amount for each customer connected to the extension. All customers directly connected to the extension for a five (5) year period after it is placed in service shall contribute equally to the cost of construction of the extension. In addition, each customer shall pay the approved tap-on fee applicable at the time of his application for the meter connection. The tap-on fee shall not be considered part of the refundable cost of the extension and may be changed during the refund period. After the five (5) year refund period expires, any additional customer shall be connected to the extension for the amount of the approved tap-on fee only. After the five (5) year refund period expires, the utility shall be required to make refunds for an additional five (5) year period in accordance with subparagraph 1 of this paragraph.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new [~~additional~~] customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. [~~but in no case shall the~~] Total amount refunded shall not exceed the amount paid to the utility. [~~After the end of the refund period from the completion of the extension,~~] No refund shall [~~will be required to~~] be made after the refund period ends.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements if [~~provided~~] such arrangements have receive the prior approval of [~~been approved by~~] the commission.

(5) Nothing contained herein shall [~~be construed as to~~] prohibit a utility from making at its expense greater extensions than herein prescribed, [~~should its judgment so dictate,~~] provided like free extensions are made to other customers under similar conditions. The conditions under which such extensions will be made shall be stated in the utility's filed tariff.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than fifty (50) feet upon a finding by the commission that such extension is reasonable and that an extension of fifty (50) feet or less is unreasonable under the circumstances.

Section 12. [~~13.~~] Service Connections. (1) Ownership of service.

(a) Utility's responsibility. [~~In urban areas with well-defined streets~~] The utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service connection from its main to and including the meter and meter box. The utility may recoup this expense from the customer in accordance with KRS 278.0152. [~~line from its main to and including the curb box, if a curb box is used, otherwise to the curb stop. The curb stop may be installed at a convenient place between the property line and the curb. All services shall include a curb stop.~~]

(b) In areas where the distribution system follows well-defined streets and roads, the customer's point of service shall be located at that point on or near the street right-of-way or property line most accessible to the utility from its distribution system. In areas where the distribution system does not follow streets and roads, the point of service shall be located as near the customer's property line as practicable. Prior to installation of the meter the utility shall consult with the customer as to the most practical location.

(2) Customer's responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the point of service [~~curb stop~~] to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.

[~~(2) Location of service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.~~]

Section 13. [~~14.~~] Measurement of Service. (1) Metering. **All water sold** [~~Each customer's premises served~~] [~~All water sold~~] by a utility shall be **upon the basis of** [~~individually~~] [~~upon the basis of~~] metered **volume sales** [~~per occupancy unit~~] except as set forth in subsection (2) of this section [~~and 807 KAR 5:007~~]. [~~volume sales except that the utility may at its option provide flat rate or estimated service for the following:~~]

(2) Unmetered service. If water usage can be readily estimated, the utility may, subject to commission approval, provide unmetered service. For unmetered service the utility shall develop standard methods for estimating the volume of water used and maintaining

records which show volumes used and associated revenues and expenses. Methods proposed to be used shall be submitted to the commission for approval. Flat rates conforming to the requirements set forth in 807 KAR 5:006, Section 6(3), may be charged for the following:

(a) Temporary service of such duration that installation of a meter is not feasible [where the water used can be readily estimated].

(b) Public and private fire protection service.

(c) Water used for street sprinkling and sewer flushing, when provided for in a contract between the utility and a municipality or other local government[al] authority.

(d) Service to water haulers if installation of coin-operated or other metered stations is not feasible.

(3) [(2)] Registration of meter. All meters used for metered sales shall have registration devices indicating the volume of water measured in either cubic feet or U.S. gallons. Where a constant or multiplier is necessary to convert the meter reading to cubic feet or gallons, the constant shall be indicated upon the face of the meter.

[(3) Charge for service line and meter installation.]

[(a) No utility shall charge for the installation or the use of its portion of the service line or of any devices for metering service to a customer, except for temporary service where the utility may charge its actual cost of installation and removal of service lines and metering devices.]

[(b) A water district, organized under KRS Chapter 74, may, subject to the approval of the commission, make a charge or "tapping fee" for installing service to its customers. Said "tapping fee" shall include a service tap, meter, meter vault, and installation thereof.]

(4) Standard method of meter and service line installation. Each utility shall adopt a standard method of installing meters and service lines and shall file with the commission a written description and[/or] drawings in sufficient detail that the requirements are clearly understandable. Copies of these standard methods shall be made available to prospective customers and contractors or others engaged in the business of placing pipe for water utilization. All meters shall be set in place by the utility.

Section 14. [15.] Meter Test Facilities and Equipment. (1) Test facilities. Except as provided in 807 KAR 5:006, Section 15(2), each utility furnishing metered water service shall have [provide] the necessary standard facilities, instruments and other equipment for testing its meters in compliance with this regulation.

(2) Shop equipment. The utility's meter test shop shall, insofar as practicable, simulate [the] actual service conditions of temperature, inlet pressure, and outlet pressure. It shall be provided with [the] necessary equipment, including valves on the inlet and outlet sides of the meter test bench, calibrated tanks, a device for regulating flow, a gauge to measure flow rate, pressure gauges and pressure relief valves. [fittings, including a quick-acting valve for controlling the starting and stopping of the test and a device for regulating the flow of water through the meter under test within the requirements of this regulation. The overall accuracy of the test equipment and test procedures shall be sufficient to enable test of service meters within the requirements of this regulation. In any event] The [inherent] overall error [accuracy] of the calibrated test tanks shall not [equipment shall permit tests with an overall error not to] exceed three-tenths (.3) of one (1) percent.

(3) Test measurement standards.

(a) Basic standard. Measuring devices for testing meters shall consist of a calibrated tank for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be certified [certificated] as to its accuracy by the commission within the preceding thirty-six (36) [twenty-four (24)] months. If a weight standard is used, the scales shall be tested and calibrated at least once a year and certified as to accuracy by the commission.

(b) Size of basic standards. When meters are tested by weight method, [it is required that] utilities whose measure of quantity is the cubic foot shall use test equipment capable of holding not less than one (1) [two (2)] cubic foot [feet] of water. Utilities whose measure of quantity is the U.S. gallon shall use equipment holding not less than ten (10) [twenty (20)] U.S. gallons.

(c) Standard meter. With [By special permission of the] commission approval, a standard meter may be provided and used by any utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated to a basic standard periodically to insure its accuracy within the limits required by this regulation. In any event, such test shall be made at least once every other [each] week while the standard meter is in use and a record of such tests shall be kept by both the utility and, if applicable, the organization doing the meter testing.

Section 15. [16.] Accuracy Requirements of Water Meters. (1) General. All meters used for measuring the quantity of water delivered to a customer shall be in good mechanical condition and shall be adequate in size and design for the type of service which they measure.

(2) Testing of [New or repaired] meters. All new meters, and any [all] meter[s] removed from service for any cause [repairs or test in accordance with this regulation], shall be tested for accuracy as specified herein prior to being placed in service.

(a) Test flows. The test flow and normal test flow limits for the various types of cold water meters shall be [, are] as follows:

TEST REQUIREMENTS FOR NEW, REBUILT, AND REPAIRED COLD WATER METERS*

Size in.	Maximum Rate (All Meters) Flow Rate gpm	Test Quantity gal	Test Quantity ft³	Accuracy Limits Percent	Intermediate Rate (All Meters) Flow Rate gpm	Test Quantity gal	Test Quantity ft³	Accuracy Limits Percent	Minimum Rate (New and Rebuilt) Flow Rate gpm	Test Quantity gal	Test Quantity ft³	Accuracy Limits Percent	Minimum (Repaired) Accuracy Limits Percent (min.)
Displacement Meters													
5/8	15	100	10	98.5-101.5	2	10	1	98.5-101.5	1/4	10	1	95-101	90
5/8 x 3/4	15	100	10	98.5-101.5	2	10	1	98.5-101.5	1/4	10	1	95-101	90
3/4	25	100	10	98.5-101.5	3	10	1	98.5-101.5	1/2	10	1	95-101	90
1	40	100	10	98.5-101.5	4	10	1	98.5-101.5	3/4	10	1	95-101	90
1 1/2	50	100	10	98.5-101.5	8	100	10	98.5-101.5	1 1/2	100	10	95-101	90
2	100	100	10	98.5-101.5	15	100	10	98.5-101.5	2	100	10	95-101	90
3	150	500	50	98.5-101.5	20	100	10	98.5-101.5	4	100	10	95-101	90
4	200	500	50	98.5-101.5	40	100	10	98.5-101.5	7	100	10	95-101	90
6	500	1000	100	98.5-101.5	60	100	10	98.5-101.5	12	100	10	95-101	90
Multijet Meters													
5/8	15	100	10	98.5-101.5	1	10	1	98.5-101.5	1/4	10	1	97-103	90
5/8 x 3/4	15	100	10	98.5-101.5	1	10	1	98.5-101.5	1/4	10	1	97-103	90
3/4	25	100	10	98.5-101.5	2	10	1	98.5-101.5	1/2	10	1	97-103	90
1	35	100	10	98.5-101.5	3	10	1	98.5-101.5	3/4	10	1	97-103	90
1 1/2	70	100	10	98.5-101.5	5	100	10	98.5-101.5	1 1/2	100	10	97-103	90
2	100	100	10	98.5-101.5	8	100	10	98.5-101.5	2	100	10	97-103	90
Class I Turbine Meters													
1 1/2	80	200	20	98-102					12	100	10	98-102	-
2	120	300	30	98-102					16	100	10	98-102	-
3	250	500	50	98-102					24	100	10	98-102	-
4	400	1000	100	98-102					40	100	10	98-102	-
6	1000	2000	200	98-102	Not Required				80	1000	100	98-102	-
8	1500	3000	300	98-102					140	1000	100	98-102	-
10	2200	5000	500	98-102					225	1000	100	98-102	-
12	3300	7000	700	98-102					400	1000	100	98-102	-
Class II Turbine Meters													
2	120	300	30	98.5-101.5					4	100	10	98.5-101.5	-
3	275	600	60	98.5-101.5					8	100	10	98.5-101.5	-
4	500	1000	100	98.5-101.5					15	100	10	98.5-101.5	-
6	1100	2500	250	98.5-101.5	Not Required				30	1000	100	98.5-101.5	-
8	1800	4000	400	98.5-101.5					50	1000	100	98.5-101.5	-
10	3000	6000	600	98.5-101.5					75	1000	100	98.5-101.5	-
12	4000	8000	800	98.5-101.5					120	1000	100	98.5-101.5	-
Propeller Meters													
2	100	200	20	98-102	35	100	10	98-102	30	100	10	95	90
3	150	300	30	98-102	40	100	10	98-102	35	100	10	95	90
4	200	500	60	98-102	50	100	10	98-102	45	100	10	95	90
5	400	1000	100	98-102	75	200	20	98-102	70	200	20	95	90
6	500	1000	100	98-102	90	300	30	98-102	85	300	30	95	90
8	600	2000	200	98-102	100	300	30	98-102	90	300	30	95	90
10	900	3000	300	98-102	125	300	30	98-102	110	300	30	95	90
12	1000	5000	500	98-102	150	400	50	98-102	140	400	50	95	90
14	1100	5000	500	98-102	250	1000	100	98-102	225	1000	100	95	90
16	1400	5000	600	98-102	350	1000	100	98-102	315	1000	100	95	90
18	1600	5000	600	98-102	450	2000	200	98-102	405	2000	200	95	90
20	2000	10000	1000	98-102	550	2000	200	98-102	495	2000	200	95	90
24	3000	10000	1000	98-102	800	5000	500	98-102	720	5000	500	95	90
30	4500	20000	2000	98-102	1200	5000	500	98-102	1080	5000	500	95	90
36	6000	20000	2000	98-102	1500	5000	500	98-102	1350	5000	500	95	90

Size in.	Maximum Rate (All Meters) Flow Rate gpm	Test Quantity gal	Test Quantity ft³	Accuracy Limits Percent	Intermediate Rate (All Meters) Flow Rate gpm	Test Quantity gal ft³	Accuracy Limits Percent	Change Over Point Rate Flow Rate gpm	Test Quantity gal	Test Quantity ft³	Accuracy Limits Percent	Minimum (Repaired) Accuracy Limits Percent (min.)
						Compound Meters						
2	100	100	10	97-103		§		100	10		90-103	-
3	150	500	50	97-103				100	10		90-103	-
4	200	500	50	97-103				100	10		90-103	-
6	500	1000	100	97-103				100	10		90-103	-
8	600	2000	200	97-103				200	20		90-103	-
10	900	2000	200	97-103				1000	100		90-103	-
						Fire-Service Type						
3	100	500	50	97-103		§			§		Not Less	-
4	200	500	100	97-103							than 85%	-
6	500	3000	200	97-103								-
8	600	3000	300	97-103								-
10	900	5000	500	97-103								-

* - A rebuilt meter is one that has had the measuring element replaced with a factory-made new unit. A repaired meter is one that has had the old measuring element cleaned and refurbished in a utility repair shop.
§ - Quantity should be one or more full revolution of the test hand but not less than two (2) min running.

~~[DISPLACEMENT TYPE~~

~~Nominal Meter Size Inches~~	~~Minimum Test Flow Gallons per Minute~~	~~Normal Test Flow Gallons per Minute~~
~~5/8~~	~~1/4~~	~~1 to 20~~
~~3/4~~	~~1/2~~	~~2 to 30~~
~~1~~	~~/4~~	~~3 to 50~~
~~1 1/2~~	~~1 1/2~~	~~5 to 100~~
~~2~~	~~2~~	~~8 to 160~~
~~3~~	~~4~~	~~16 to 300~~
~~4~~	~~7~~	~~28 to 500~~
~~6~~	~~12~~	~~48 to 1000]~~

~~[CURRENT TYPE Nominal Meter~~

~~Size Inches~~	~~Flow Gallons per Minute~~	~~Flow Gallons per Minute~~
~~1 1/2~~	~~7~~	~~12 to 100~~
~~2~~	~~10~~	~~16 to 160~~
~~3~~	~~15~~	~~24 to 350~~
~~4~~	~~20~~	~~40 to 600~~
~~6~~	~~30~~	~~80 to 1400~~
~~8~~	~~50~~	~~144 to 2500~~
~~10~~	~~75~~	~~224 to 3800~~
~~12~~	~~100~~	~~320 to 5800~~
~~16~~	~~150~~	~~400 to 11500]~~

~~[COMPOUND TYPE Nominal Meter~~

~~Size Inches~~	~~Flow Gallons per minute~~	~~Flow Gallons per Minute~~
~~1 1/2~~	~~1/2~~	~~2 to 100~~
~~2~~	~~1/2~~	~~2 to 160~~
~~3~~	~~1~~	~~4 to 320~~
~~4~~	~~1 1/2~~	~~6 to 500~~
~~6~~	~~3~~	~~10 to 1000~~
~~8~~	~~4~~	~~16 to 1600~~
~~10~~	~~8~~	~~32 to 2300~~
~~12~~	~~14~~	~~32 to 3100]~~

~~[FIRE SERVICE TYPE Nominal Meter~~

~~Size Inches~~	~~Flow Gallons per Minute~~	~~Flow Gallons per Minute~~
~~3~~	~~2~~	~~8 to 400~~
~~4~~	~~2~~	~~8 to 700~~
~~6~~	~~4~~	~~16 to 1600~~
~~8~~	~~7~~	~~28 to 2800~~
~~10~~	~~12~~	~~48 to 4400~~
~~12~~	~~13~~	~~48 to 6400]~~

~~[PROPELLER DRIVEN CURRENT TYPE~~

~~Meter Size Inches~~	~~Gallons per Minute~~
~~2~~	~~15 to 80~~
~~3~~	~~30 to 200~~
~~4~~	~~45 to 400~~
~~5~~	~~75 to 600~~
~~6~~	~~90 to 900~~
~~8~~	~~100 to 1200~~
~~10~~	~~125 to 1500~~
~~12~~	~~150 to 2000~~
~~14~~	~~250 to 2500~~
~~16~~	~~275 to 3500~~
~~18~~	~~400 to 4500~~
~~20~~	~~475 to 5500~~
~~24~~	~~700 to 8000~~
~~30~~	~~1200 to 1200~~
~~36~~	~~1500 to 16000]~~

(b) Determination of meter accuracy. ~~[Meters shall be tested at the minimum test flow and at least two (2) test flows in the normal test flow limits, one (1) of which shall be not less than seventy five (75) percent of the rated maximum capacity of the meter and the other shall be at approximately twenty five (25) percent of the rated maximum capacity.~~] No new, rebuilt or repaired meter shall be placed in service if the following required tests show that it does not register within the accuracy limits specified in paragraph (a) of this subsection. ~~[it registers less than ninety five (95) percent of the water passed through it at the minimum test flow or over registers or under registers more than one and one half (1 1/2) percent in the normal test flow limits as set out in paragraph (a) of this subsection. No repaired or reconditioned meter shall be placed in service if it registers less than eighty (80) percent of the water passed through it at the minimum test flow or over registers or under registers more than one and one half (1 1/2) percent in the normal test flow limits as set out in paragraph (a) of this subsection.~~]

1. Displacement, multijet, compound, fire service and propeller type meters. Meters of the displacement, multijet, compound, fire service and propeller type shall be tested at the minimum, intermediate and high test flow rates shown in paragraph (a) of this subsection.

At least one (1) additional test shall be performed within the range of flows of compound and fire service meters to determine overall operational efficiency and accuracy of registration.

2. Class I and Class II turbine type meters. Meters of the Class I and Class II turbine type shall be tested at the minimum and high test flow rates shown in paragraph (a) of this subsection.

(3) As found tests. All meters tested in accordance with the rules for periodic, request or complaint tests, shall be tested in the condition as found in the customer's service prior to any alteration or adjustment [~~in order to determine the average meter error~~]. This test shall consist of three (3) [~~two (2)~~] rates of flow in the minimum, intermediate and high [~~normal test~~] flow range for that type of meter as set out in subsection (2)(a) of this section. [~~and the average meter error shall be the algebraic average of the errors of the two (2) tests. (For example, a meter testing one (1) percent fast at one (1) rate of flow and three (3) percent slow at the other would have an average meter error of one (1) percent slow.)~~]

(4) Determination of meter error for bill adjustment purposes. When upon periodic, request or complaint test, a meter is found to be in error in excess of the limits allowed by the commission's regulations, three (3) additional tests shall be made: one (1) at seventy-five (75) percent of rated maximum capacity; one (1) at fifty (50) percent of rated maximum capacity; one (1) at twenty-five (25) percent of the rated maximum capacity. The average meter error shall be the algebraic average of the errors of the three (3) tests.

Section 16. [~~17.~~] Periodic Tests. (1) Each utility shall test periodically all water meters so that no meter will remain in service without test for a period longer than specified in the following table:

Size of Meter Inches	Interval Between Tests Years
5/8	10 [~~5~~]
5/8 x 3/4	10
3/4	10 [~~5~~]
1	10 [~~5~~]
1 1/4	4
1 1/2	4
2	4
3	2
4 and larger	1

[~~(2) "Periodic test periods" for testing meters in the systems of utilities supplying water of high turbidity, or of peculiar characteristics, will be determined by the commission from time to time.~~]

(2) [~~(3)~~] Meters of the current and compound type shall be cleaned at a minimum of the frequency listed in subsection (1) of this section for testing. If meters are tested in place at the frequency listed in subsection (1) of this section and during the test are flushed at a high rate of flow, the meter shall be considered to be in compliance with this section. [~~least once each year. When filtered or exceptionally clear water is delivered, the interval between cleaning may, upon application to the commission and upon receipt of authority therefor, be made longer.~~]

(3) If [~~(4) Whenever~~] the number of meters of any type which register in error beyond the limits specified in this regulation is found by the commission to be excessive, then that [~~this~~] type shall be tested with such additional frequency as the commission may direct.

Section 17. Water Shortage Response Plans. Each utility which files a water shortage response plan with the Natural Resources Cabinet shall simultaneously file a copy of the plan with the commission. Any utility which has already filed a plan with the Natural Resources Cabinet shall file the plan with the commission within sixty (60) days of the effective date of this regulation.

Section 18. Deviations from Regulation. In special cases, for good cause shown, the commission may permit deviations from this regulation.

ROBERT M. DAVIS, Vice Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 15, 1991
FILED WITH LRC: November 15, 1991 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(As Amended)

815 KAR 7:025. Kentucky Building Code.

RELATES TO: KRS Chapter 198B
STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems. This regulation includes the substance of 815 KAR 7:020, which is being repealed. This amendment is necessary to update the reference to NFPA Pamphlets dealing with sprinkler systems to the latest edition. This change was approved by the Board of Housing on January 23, 1992. [~~These amendments are necessary to allow an alternate method of compliance for separation between tenant spaces in attics when the walls are perpendicular to the roof trusses; to upgrade the elevator standards to the latest edition of the elevator code; to provide alternate facility dimensions for accessibility for disabled children in day care and elementary schools.~~]

Section 1. [~~2.~~] Article 2, Definitions. Amend Article 2 by adding the following definitions:

(1) "Alarm verification" means a feature of automatic fire detection systems to reduce unwanted alarms wherein automatic fire detectors report alarm conditions for a minimum period of time, or confirm alarm conditions within a given period, after being automatically reset to be accepted as a valid alarm initiation signal.

(2) "Detector, heat" means an alarm-initiating device that detects abnormally high temperature or rate-of-temperature rise.

(3) "Exit discharge, level of" means the horizontal plane located by the point at which an exit terminates and an exit discharge begins.

(4) "Fire alarm box, manual" means a manually operated alarm-initiating device that activates a fire protective signaling system.

(5) "Fire command station" means the principal location where the status of the detection, alarm, communications and control systems is displayed and from which the system has the capability for manual control.

(6) "Heated slab" means slab-on-grade construction in which the heating elements or hot air distribution system is in contact with or placed within the slab or the subgrade.

(7) "Infiltration" means the uncontrolled inward air leakage through cracks and interstices in any building element and around windows and doors of a building caused by the pressure effects of wind or the effect of differences in the indoor and outdoor air density.

(8) "Multiple single-family dwelling" means a building or portion thereof containing more than two (2) dwelling units.

(9) "Opaque areas" means all exposed areas of a building envelope which enclose conditioned space, except openings for windows, skylights, doors and building service systems.

(10) "Overall thermal transfer value (OTTV)" means the thermal transfer into a building through the walls or roof due to solar heat gain and outdoor-indoor temperature differences as determined by Equations 3 and 4 (see Article 31).

(11) "Shading coefficient (SC)" means the solar heat gain of fenestration divided by the solar heat gain of one-eighth (1/8) inch clear glass.

$$SC = \frac{\text{Solar Heat Gain of Fenestration}}{\text{Solar Heat Gain of 1/8-inch Clear Glass}}$$

(12) "Smoke detector, multiple station" means single-station smoke detectors which are capable of being interconnected so that actuation of one (1) causes all integral or separate audible alarms to operate.

(13) "Smoke detector, single station" means an assembly

incorporating the detector, control equipment and the alarm- sounding device in one (1) unit, which is operated from a power supply either in the unit, or obtained at the point of installation.

(14) "Supervisory device" means an initiating device used to monitor the conditions that are essential for the proper operation of automatic fire suppression systems (i.e., switches used to monitor the position of gate valves, a low air-pressure switch on a dry-pipe sprinkler system, etc.)

(15) "Voice/alarm signaling system" means a system that provides, to the occupants of a building, dedicated manual or automatic facilities, or both, for originating and distributing voice instructions, as well as alert and evacuation signals pertaining to a fire emergency.

(16) "Wireless initiating device" means an initiating device which communicates with associated control or receiving equipment by means of wireless transmission medium.

Section 2. [1.] Adoption of Building Code. (1) The "BOCA National Building Code/1990," Eleventh Edition, Articles 2 through 32 and Appendices A through D, published by Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as if [it is] set forth at length herein, except as amended in Section 2 through 34 [33] of this regulation. Copies are available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) Article 1, Administration and Enforcement, is hereby deleted in its entirety. All requirements for the administration and enforcement of this regulation are set forth in 815 KAR 7:010 with fees established by 815 KAR 7:013.

Section 3. Article 3, Use Group Classification. Amend Article 3 by making the following additions, deletions or changes:

(1) Amend subsection 304.1 to read as follows: "304.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities, shall be classified in Use Group E. Educational type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B. School buildings, or parts thereof, used for business training or vocational training shall be classified in the same use group as the business or vocation taught. 304.1.1 Day Care Facilities: A day care facility which provides care for more than four (4) persons for less than twenty-four (24) hours per day shall be classified as Use Group E."

(2) Delete subsection 307.3.1, Child care facility, in its entirety.

(3) Amend subsection 309.5, Use Group R-4 Structures, to read as follows: "309.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures as indicated in the One (1) and Two (2) Family Dwelling Code listed in Appendix A. All of these structures shall be designed and built in accordance with the requirements of this code for a Use Group R-3 structure, or with the requirements of the one (1) and two (2) family dwelling code, except that the requirements of the State Plumbing Code (Article 28) shall supersede those conflicting requirements of the One (1) and Two (2) Family Dwelling Code. This choice shall be made by the builder at the time of plans submission. A builder may use Exception #4 of Section 809.4 to determine minimum size of egress windows."

(4) Create a new subsection to read as follows: "310.4 Tobacco auction warehouses: Warehouses, for the sale of tobacco only, of Type 1, Type 2 or Type 3 construction, may be constructed without a sprinkler system if all of the following requirements have been met:

(a) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse shall be used solely for the sale of tobacco on a seasonal basis or for the storage of noncombustibles.

(b) A fire protective signaling system (manual fire alarm) and automatic fire detection system (smoke detection) with notification to the local fire service shall be provided with installation in accordance with Sections 1016, 1017 and 1020 of this code.

(c) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(d) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building.

Section 4. Article 4, Types of Construction Classification. Amend Article 4 by making the following additions, deletions or changes:

(1) Amend Table 401, Fire-resistance Ratings of Structure Elements (In Hours), by creating a footnote to read as follows: "Note 1. The fire partitions and floor/ceiling assembly ratings in R-2 buildings may be reduced to one (1) half (1/2) hour if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and if equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(2) Amend the notation under "Dwelling unit separations" in column "Structure element" within Table 401 to read as follows: "(Sections 910.0, 913.0 and Notes f, j and l)."

Section 5. Article 5, General Building Limitations. Amend Article 5 by making the following additions, deletions or changes:

(1) Amend subsection 504.2, Exterior walls, by adding one (1) sentence at the end of the paragraph to read as follows: "The entire perimeter of one (1) story unlimited area buildings shall have a minimum fire separation distance of thirty (30) feet (9144 mm)."

(2) Amend subsection 505.1 by changing the number "103.0" to read "106.0."

(3) Amend subsection 511.1 by changing the number "124.0" to read "123.0."

(4) Delete subsections 512.1 through 512.4.1 and insert in lieu thereof the following: "512.1 Barrier Free Design. Please see 815 KAR 7:060 (Article 33) for construction requirements providing for accessible buildings and facilities."

(5) Delete subsection 513.1, Approval, in its entirety.

Section 6. Article 6, Special Use and Occupancy Requirements. Amend Article 6 by making the following additions, deletions or changes:

(1) Amend subsection 602.2, Maintenance and inspection, to read as follows: "602.2 Maintenance and inspection: All fire protection systems shall be maintained in an operative condition at all times and shall be periodically inspected and tested in accordance with the fire prevention code listed in Appendix A."

(2) Amend Section 608.1, Attached Garages, by adding the following exception: "Exception: In lieu of the required one and three quarter (1 3/4) inch or twenty (20) minute door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system shall be permitted."

(3) Create a new subsection 623.1.1 to read as follows: "623.1.1 New facilities: The Cabinet for Human Resources, Department for Health Services, shall regulate the design and construction of new facilities as related to water distribution and treatment systems for public swimming pools and the proper operation and maintenance of all pool facilities. See 902 KAR 10:120, Kentucky public swimming and bathing facilities regulation."

Section 7. Article 7, Interior Environmental Requirements. Amend Article 7 by making the following additions, deletions or changes:

(1) Create a new subsection 701.2 to read as follows: "701.2 Alternative Mechanical System: HVAC systems in occupancies reviewed under NFiPA 101 pursuant to Section 126.1 of this code shall be installed in accordance with NFiPA 90A or NFiPA 90B in lieu of the mechanical code listed in Appendix A."

(2) Delete subsections 702.1 through 702.3 in their entirety.

(3) Amend subsection 708.1.3, Furred Ceilings, by adding the following exception: "Exception: In Use Group R-3 basement recreation rooms, a furred ceiling height of six feet and eight inches (6'8") around the ducts may be made in the soffit area only for structural beams and mechanicals. The two-thirds (2/3) area requirements listed in this section shall still be met."

(4) Amend subsection 709.3 to read as follows: "709.3 Alternative mechanical ventilation: Enclosed attic, rafter and crawl spaces and other uninhabited spaces such as unfinished basements, which are not ventilated as herein required, shall be equipped with a mechanical ventilation system conforming to the requirements of Section M-1605 of the mechanical code listed in Appendix A."

Section 8. Article 8, Means of Egress. Amend Article 8 by making the following additions, deletions or changes:

(1) Delete subsection 804.2.1 in its entirety.

(2) Amend Table 806.1.2 by adding a notation to Industrial areas to read as follows: "Note: Use a value of 200 gross for purposes of determining jurisdiction under Sections 108 and 109, design professional seal requirements, and Article 33, applicability."

(3) Create a new subsection 807.3.2 to read as follows: "807.3.2 Protection of egress: A required means of egress shall not discharge directly into a vehicular path unless guards are provided to protect vehicles from hitting the exit door in any outward opened position and to direct pedestrians in a path running parallel to the vehicular path. The guards shall prevent the exit door from being blocked by movable objects such as dumpsters or parked vehicles."

(4) Amend Table 809.3, Buildings with One Exit, to read as follows:

TABLE 809.3
BUILDINGS WITH ONE EXIT

Use Group	Maximum No. of stories above grade	Maximum occupants, travel distances[d] or dwelling units per floor
All	1 story	50 occupants
B[b],F,M,S[a]	2 stories	30 occupants and a 75-foot travel distance
R-2	2 stories[e]	4 dwelling units and a travel distance of 50 feet
R-2	3 stories[c]	4 dwelling units

Note a. For the required number of exits for open parking structures, see Section 809.5

Note b. For the required number of exits for air traffic control towers, see Section 617.0.

Note c. Buildings of Use Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2 shall have a maximum height of three (3) stories above grade.

Note d. One (1) foot = 304.8 mm.

Note e. When equipped with an NFiPA 13D sprinkler system listed in Appendix A, the travel distance shall be increased to seventy-five (75) feet and the number of dwelling units per floor shall be increased to eight (8), but not more than four (4) units shall share a single exit."

(5) Amend subsection 809.4, Emergency Escape, by adding two (2) additional exceptions to read as follows: "4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 Use Groups) and one (1) and two (2) family dwellings may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed area shall be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)" and "5. An outside window or exterior door for emergency escape shall not be required in R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(6) Amend Table 810.4, Corridor Fire-resistance Rating, to read as follows:

TABLE 810.4
CORRIDOR FIRE-RESISTANCE RATING

Use Group	Total Required Capacity of all Exits from Corridor	Required Fire-resistance Rating Without sprinkler system	With sprinkler system[d]
H	>30	NP[e]	1 hr.
A,B,E,F,M,S	>30	1 hr.	0
I-1,R[a],[f]	>10	1 hr.	1/2 hr.
I-2	All	1 hr.	0[b]
I-3	All	NP	0[c]

Note a. For reduction in fire-resistance rating for Use Group R, see Section 810.4, Exception 2.

Note b. For requirements for Use Group I-2, see Section 610.3.

Note c. For reduction in fire-resistance rating for Use Group I-3, see Table 611.8.

Note d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Note e. NP = Not Permitted.

Note f. In R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A, the required fire resistance rating shall be one-half (1/2) hour."

(7) Amend the exception to 810.4.1, Corridor walls as separation walls, to read as follows: "Exception: Tenant separation and dwelling unit separation walls which are also corridor walls shall not be required to have a fire-resistance rating greater than that required by Table 810.4 where the building is equipped throughout with an automatic sprinkler system in accordance with Sections 1004.2.1, 1004.2.2 or 1004.2.3."

(8) Amend subsection 813.4.2, Panic Hardware, as follows:

(a) Amend the first sentence to read as follows: "All doors equipped with latching or locking devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100, shall be equipped with approved panic hardware."

(b) Create an exception to subsection 813.4.2 to read as follows: "Exception: Panic hardware for Use Group A3 shall not be required for principal entrance/exit doors if:

1. They are free-swinging; and
2. The calculated occupant load does not exceed 150; and
3. The latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

(9) Amend subsection 816.3, Maximum slope, to read as follows: "816.3, Maximum slope: The maximum slope of means of egress ramps shall be one (1) unit vertical in eight (8) units horizontal (1:8); except ramps required in accordance with Article 33 for persons with physical handicaps, in which case the maximum slope shall be: one (1) unit vertical in eight (8) units horizontal (1:8) if the rise is limited to three (3) inches (76 mm); one (1) unit vertical in ten (10) units horizontal (1:10) if the rise is limited to six (6) inches (152 mm); or one (1) unit vertical in twelve (12) units horizontal (1:12) otherwise."

(10) Amend subsection 817.12, Exterior Stairways, by deleting the first sentence to read as follows: "817.12 Exterior stairways: Exterior stairways shall not be accepted as an exit in the following cases:

1. Buildings of Use Group I-2 which exceed four (4) stories or fifty (50) feet in height.
2. Buildings of Use Group I-3.
3. Floors that exceed five (5) stories or sixty-five (65) feet in height above the level of exit discharge."

Section 9. Article 9, Fire-resistive Construction. Amend Article 9 by making the following additions, deletions, or changes:

(1) Amend subsection 901.2, Penetrations, to read as follows: "Plans for buildings shall indicate where penetrations shall be made for electrical, mechanical, plumbing and communication conduits, pipes and systems, and shall also indicate the materials and methods for maintaining the required structural integrity, fire-resistance rating and firestopping. Approved penetration assemblies shall be used for all combustible penetrations of fire-resistant rated building elements as specified in Section 910.3.1."

(2) Amend subsection 903.4, Interior Hangings and Decorations, to read as follows: "Interior hangings and decorations shall comply with Section 903.4.1."

(3) Delete subsections 903.4.2, 903.4.3 and 903.4.4 in their entirety.

(4) Create a new subsection 904.4 to read as follows: "904.4 Combustible pipe: Combustible pipe shall be permitted in all use

groups and construction types where approved by Article 28 of this Code and the Kentucky State Plumbing Code."

(5) Create a new subsection 904.4.1 to read as follows: "904.4.1 Vertical combustible pipe: Vertical combustible pipes shall comply with Sections 910.3.1 and 915.3.2."

(6) Create a new subsection 910.3.1, Through-Penetration System, to read as follows: "910.3.1 Through-Penetration System: Combustible cable trays, conduits, tubes or pipes shall be allowed to penetrate a rated assembly if they are protected with an approved through penetration protection system that has been tested in accordance with ASTM E-814 listed in Appendix A. Exception: In buildings of Use Groups R-1 and R-2 when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) level below the highest level of exit discharge, the through penetrations shall not be required to be protected with an ASTM E-814 system, if equipped with an NFiPA sprinkler system listed in Appendix A".

(7) Amend subsection 913.4, Penetration protection, by creating an additional exception to read as follows: "4. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure if the following conditions exist:

(a) The cross-sectional area does not exceed thirty-five (35) square inches (22581 mm^2; and

(b) The duct does not penetrate more than three (3) floors; and

(c) The duct does not serve more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) These ducts shall be restricted for use as a bathroom or kitchen exhaust and combustion air supply and relief."

(8) Amend subsection 921.7.2.1, Use Group R, by creating an additional exception to read as follows: "6. When dwelling unit separation walls are constructed to the underside of a fire-resistance rated roof/ceiling assembly or to a ceiling with sixty (60) minute finish rating, the attic draftstopping complying with subsection 921.7.2.2 (i.e., horizontal draftstopped areas not exceeding 3,000 square feet) shall be deemed equivalent."

Section 10. Article 10, Fire Protection Systems. Amend Article 10 by making the following additions, deletions or changes:

(1) Amend subsection 1002.8 by amending the exception to read as follows: "Exception: Use Group R-1 buildings (hotels, motels, etc.) where all guestrooms are not more than one (1) story above the lowest level of exit discharge of the exits serving the guestroom (e.g., a two (2) story building with basement). Each guestroom shall have at least one (1) door opening directly to an exterior exit access which leads directly to the exits."

(2) Amend subsection 1002.9 by creating two (2) exceptions to read as follows:

(a) "Exception 1. Two (2) Story Buildings with Basement. Use Group R-2 buildings (apts., condos, dorms, etc.) where all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (e.g., a two (2) story building with a basement)."

(b) "Exception 2. Existing buildings. R-2 buildings that exceed two (2) stories but which do not have more than six (6) dwelling units. This exception shall not apply to buildings constructed after the effective date of this code."

(3) Create a new subsection 1004.2.3 to read as follows: "1004.2.3 NFiPA 13D Systems. A sprinkler system in accordance with NFiPA 13D listed in Appendix A shall be permitted in the following occupancies:

(a) In buildings of Use Group R-2 if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (i.e., a two (2) story building with a basement).

(b) In Existing Buildings of Use Group R-2 that exceed two (2) stories but have no more than six (6) dwelling units. This shall not apply to buildings constructed after the effective date of this code.

(c) In Use Group R-1 occupancies complying with Section 1002.8."

(4) Amend subsection 1005.6.3, Domestic connection, to read as follows: "1005.6.3 Domestic connection: Two (2) check (one (1) way) valves, one (1) of which may be an alarm check valve, shall be provided at the point where the suppression system piping is connected to the domestic water piping. Shutoff valves shall not be permitted in the suppression system piping. Water supply shall be controlled by the riser control valve to the domestic water piping.

Exception: Shutoff valves in the sprinkler system piping are permitted if the valves are supervised in accordance with Section 1020.0."

(5) Amend subsection 1015.1, Yard Hydrants, to read as follows:

(a) "1015.1 Private hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A. Yard hydrant installation shall be coordinated with the local fire code officials who shall not make recommendations which exceed the requirements of National Fire Protection Association (NFiPA) Pamphlet #24. Yard hydrants shall not be installed on a water main less than six (6) inches in diameter."

(b) Create a new subsection of 1015.2 to read as follows: "1015.2 Public hydrants: Public hydrants not covered by National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A shall conform to the standards of the administrative authority of the jurisdiction as provided for by local ordinance."

(6) Amend subsection 1016.4.1, Use Group A-4 or E, by creating an additional exception to read as follows: "Exception 2. Church buildings which do not exceed 10,000 square feet and in which single station smoke detectors are installed as follows:

a. Smoke detectors may be single station and wired in series so as to sound alarm in sanctuary.

b. Smoke detectors shall be installed in fellowship hall and more hazardous areas such as furnace rooms, mechanical rooms and storage rooms, but shall not be as required in Sunday school classrooms.

c. Detector spacing shall be thirty (30) feet on center in corridors and 900 square feet per detector in open spaces, or in accordance with the manufacturer's specifications."

(7) Create an additional exception to subsection 1018.3.2, Use Group R-2, to read as follows: "3. Smoke detectors shall not be required in bedrooms of Use Group R-2 occupancies if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(8) Amend subsection 1020.2, Fire protection signaling systems, to read as follows: "1020.2 Fire protection signaling systems: All required fire protective signaling systems in the following occupancies shall transmit alarm and trouble signals to an approved central-station system, proprietary system or remote-station system.

1. Day care centers with more than 100 clients.

2. Health care facilities licensed by the Cabinet for Human Resources."

Section 11. Article 11, Structural Loads. Amend Article 11 by making the following additions, deletions or changes:

(1) Create a new subsection 1100.2 to read as follows: "1100.2 Certificate of compliance: Design compliance with the provisions of this article and Article 12 shall be satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building code official."

(2) Amend subsection 1105.4, Existing Live Load, by changing "Section 103.3" to "Section 106.3".

(3) Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties to further explain the map which shows the assigned earthquake risk zone for each.

Earthquake Risk Zone #1

Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen
Anderson	Fayette	Lee	Owsley
Barren	Fleming	Leslie	Pendleton
Bath	Floyd	Lewis	Perry
Boone	Franklin	Lincoln	Pike
Bourbon	Gallatin	Logan	Powell
Boyd	Garrard	Madison	Pulaski
Boyle	Grant	Magoffin	Robertson
Bracken	Grayson	Marion	Rockcastle
Breathitt	Green	Martin	Rowan
Breckinridge	Greenup	Mason	Russell

Bullitt	Hancock	Meade	Scott
Butler	Hardin	Menifee	Shelby
Campbell	Harrison	Mercer	Simpson
Carroll	Hart	Metcalfe	Spencer
Carter	Henry	Monroe	Taylor
Casey	Jackson	Montgomery	Todd
Christian	Jefferson	Morgan	Trimble
Clark	Jessamine	Muhlenberg	Warren
Clay	Johnson	McCreary	Washington
Clinton	Kenton	McLean	Wayne
Cumberland	Knott	Nelson	Whitley
Daviess	Knox	Nicholas	Wolfe
Edmonson	Larue	Ohio	Woodford

Earthquake Risk Zone #2		Earthquake Risk Zone #3	
Bell	Hopkins	Ballard	Hickman
Caldwell	Letcher	Carlisle	Livingston
Calloway	Lyon	Fulton	Marshall
Crittenden	Trigg	Graves	McCracken
Harlan	Union		
Henderson	Webster		

(4) Amend subsection 1113.1.1 by creating the following exception: "Exception: In Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

Section 12. Article 12, Foundation Systems and Retaining Walls. Amend Article 12 by making the following additions, deletions or changes: Amend Subsection 1205.1 to read as follows: "Except when erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than 100 square feet (9.30 m^2) in area or ten (10) feet (3048 mm) in height shall extend below the frost line of the locality, to a minimum depth of twenty-four (24) inches, or whichever is deeper, and spread footings of adequate size shall be provided if necessary to distribute properly the load within the allowable bearing value of the soil. Alternatively, the structures shall be supported on piles if solid earth or rock is not available. Footings shall not be founded on frozen soils unless the frozen condition is of a permanent character."

Section 13. Article 13, Materials and Tests. Amend Article 13 by making the following additions, deletions or changes:

(1) Delete subsection 1301.3 in its entirety.

(2) Delete subsections 1308.1 through 1308.8 in their entirety.

Section 14. Article 14, Masonry, is hereby adopted in its entirety.

Section 15. Article 15, Concrete, is hereby adopted in its entirety.

Section 16. Article 16, Gypsum and Plaster, is hereby adopted in its entirety.

Section 17. Article 17, Wood, is hereby adopted in its entirety.

Section 18. Article 18, Steel, is hereby adopted in its entirety.

Section 19. Article 19, Lightweight Metal Alloys, is hereby adopted in its entirety.

Section 20. Article 20, Plastic, is hereby adopted in its entirety.

Section 21. Article 21, Exterior Walls. Amend Article 21 by making the following additions, deletions or changes: Create a new subsection to read a follows: "2100.2 Approval of plans: Plans showing compliance with Section 2101.6.1 through 2101.6.11.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 22. Article 22, Vertical and Sloped Glass and Glazing. Amend Article 22 by making the following additions, deletions or changes:

(1) Create a new subsection 2201.1.1 to read as follows: "2201.1.1 Labeling requirements: Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in a location within the Commonwealth of Kentucky shall be permanently labeled by etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."

(2) Amend Paragraph 7 of subsection 2203.2, Specific Hazardous Locations, to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m^2) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of the glazing, and the finish floor or walking surface is extended on both sides of said glazing. In lieu of safety glazing, glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

Section 23. Article 23, Roofs and Roof Coverings, is hereby adopted in its entirety except subsection 2308.2 is amended to read as follows: "2308.2 Structural and construction loads: The roof covering system and the material and equipment loads that will be encountered during installation of the roof covering system shall not exceed the capacity of the structural roof components."

Section 24. Article 24, Masonry Fireplaces, is hereby adopted in its entirety.

Section 25. Article 25, Mechanical Equipment and Systems. Amend Article 25 by making the following additions, deletions or changes:

(1) Amend subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(2) Create a new subsection 2500.3 to read as follows: "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1, as required by Kentucky boiler regulations set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(3) Create a new subsection 2500.4 to read as follows: "2500.4 Mechanical Code: All mechanical equipment and systems which are not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in accordance with the BOCA National Mechanical Code/1990 including all applicable standards listed within Appendix A."

(a) Create a new subsection 2500.4.1 to read as follows: "2500.4.1 Mechanical ventilation: Mechanical ventilating systems may be designed in accordance with the provisions of ASHRAE Standard 62-1989 listed in Appendix A as an equivalent alternative to the BOCA National Mechanical Code/1990."

(b) Create a new subsection 2500.4.2 to read as follows: "2500.4.2 Design of mechanical systems: The building code official may use the actual occupant load in lieu of Table 806.1.2 in the design of mechanical ventilating systems. This applies to both the BOCA National Mechanical Code/1990 and ASHRAE 62-1989 listed in Appendix A."

(4) Create a new Section 2511.0 entitled "Rangehoods" to read as follows: "2511.1 Rangehoods: Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four (4) feet above the cooking surface."

(5) Create a new subsection, 2511.2, Commercial Exhaust System not Required, to read as follows: "2511.2 Commercial

Exhaust System not Required: In churches and in other occupancies where the range is merely a convenience for occasional use and where there is minimal or nonexistent grease laden vapors, commercial exhaust systems shall not be required."

Section 26. Article 26, Elevator, Dumbwaiter, and Conveyor Equipment, Installation and Maintenance. Amend Article 26 by making the following additions, deletions or changes:

(1) Amend subsection 2602.4.1 to read as follows: "2602.4.1 Periodic inspection intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(2) Amend subsection 2603.4 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(3) Amend subsection 2607.4 to read as follows: "2607.4 Location of vents: Vents shall be located at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air. Holes in the machine room floors for the passage of ropes, cables or other moving elevator equipment shall be limited so as not to provide greater than two (2) inches (51 mm) of clearance on all sides."

(4) Create a new subsection 2607.4.1 to read as follows: "2607.4.1 Mechanical ventilation: Mechanical ventilation shall be allowed in buildings other than Use Groups R-1, R-2, I-1, I-2 and similar uses with overnight sleeping quarters if outside exposure for the required vents is not possible. The mechanical ventilation shall conform to the mechanical code listed in Appendix A."

(5) Amend subsection 2607.5 to read as follows: "2607.5 Area of vents: Except as provided for herein, the area of the vents shall not be less than three and one-half (3 1/2) percent of the area of the hoistway nor less than three (3) square feet (0.28 m^2) for each elevator car, and not less than three and one-half (3 1/2) percent nor less than one-half (1/2) square foot (0.047 m^2) for each dumbwaiter car in the hoistway, whichever is greater. Of the total required vent area, not less than one-third (1/3) shall be of the permanently open type unless all vents activate upon detection of smoke from any of the elevator lobby smoke detectors. Where mechanical ventilation conforming to the mechanical code listed in Appendix A provides equivalent venting, the required vent area shall be reduced if compliance with subsection 2607.4.1 is met."

(6) Create a new Section 2612.0 entitled "Vertical Chairlifts and Wheelchair Lifts: to read as follows: "2612.1 General: Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Appendix A. Exception: Vertical wheelchair lifts may have a travel distance not to exceed 23 feet and penetrate a floor subject to the following additional requirements.

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.

2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.

3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.

4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

(7) Create a new section 2613.0 entitled "Machine Rooms and Related Construction for Passenger and Freight Elevators and Dumbwaiters" to read as follows: "2613.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required to the hoistway enclosure in Table 401."

Section 27. Article 27, Electric Wiring, Equipment and Systems. Amend Article 27 by making the following additions, deletions or changes:

(1) Amend subsection 2700.1, Scope, by adding the following sentence: "Tentative Interim Amendments issued to NFiPA 70 and accepted by the department shall be permitted to be used for interpretations of NFiPA 70."

(2) Create a new subsection 2700.5 to read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with Kentucky Administrative Regulation 815 KAR 35:015."

(3) In subsections 2702.1, 2702.3, and 2703.1 delete the words "code official" and insert in lieu thereof the words "certified electrical inspector."

(4) Delete subsections 2701.3, 2704.3, and 2704.4 in their entirety.

Section 28. Article 28, Plumbing Systems. Amend Article 28 by deleting sections 2800.1 through 2807.1 in their entirety and insert in lieu thereof the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations. Copies are available from the Kentucky Division of Plumbing, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601."

Section 29. Article 29, Signs, is deleted in its entirety.

Section 30. Article 30, Precautions During Building Operations. Amend subsection 3005.2 by deleting the words, "Section 2805.4" and insert in lieu thereof the words, "Article 28, 815 KAR 20:090 and Article 9, respectively."

Section 31. Article 31, Energy Conservation, is hereby adopted in its entirety.

Section 32. Article 32, Repair, Alteration, Addition to and Change of Use of Existing Buildings. Amend Article 32 by making the following additions, deletions or changes:

(1) Amend subsection 3202.1 to read as follows: "3202.1 General: The provisions in Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(2) Amend subsection 3202.1.5 to read as follows: "3202.1.5 Handicapped requirements: All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1. Federal regulations issued by the Department of Justice may be more stringent than this Code."

Section 33. Create a new subsection, 3303:2, Preschool, day care and elementary school modifications, to read as follows: "Preschool, day care and elementary school modifications: The standards set forth in "Recommendations for Accessibility to serve Physically Handicapped Children in Elementary Schools" dated March, 1986, may be used for providing handicapped accessibility for students in lieu of the listed dimensions and heights identified in this Article. This document is published jointly by the General Services Administration, the United States Postal Service, and the Departments of Defense and Housing and Urban Development, and a copy may be obtained from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036. Copies are also available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday."

Section 34. Appendix A, Referenced Standards. Amend Appendix A by making the following additions, deletions or changes:

(1) Amend the reference to the BOCA National Fire Prevention Code 1990 listed in Appendix A by adding the following language: "The Kentucky Standards of Safety (815 KAR 10:040 - Fire Prevention Code) as amended by the Kentucky Department of Housing, Buildings and Construction."

(2) Elevators. Amend the reference to Safety Code for Elevators and Escalators to read "A17.1-1990"]."

(3) Add the following language and list of National Fire Protection Association (NFiPA) Pamphlets to Appendix A:

"These National Fire Protection Association (NFiPA) Pamphlets are listed for use in fire suppression design and installation only if referenced in a specific code required by Articles 2 through 32 of this code.

Aircraft Hangars	#409
Pyroxylin Plastics	#40C
Flammable Liquids	#30
Laboratories	#45
Fireworks	#1124
L.P. Gas Storage	#58
High Piled Storage in Excess of 12 ft. in height	#231
Rubber Tire Storage	#231D
Baled Cotton Storage	#231E
Rolled Paper Storage	#231F
Rangehoods	#96
Computer Rooms	#75
Archives and Record Centers	#232AM
L.P. Gas Storage and Handling	#59A
Explosion Prevention Systems	#69
Code for the Manufacture and Storage of Aerosol Products	#30B
Installation of Closed-head Foam Water Sprinkler Systems	#16A
Fur Storage	#81
Cooling Towers	#214
Marinas and Boatyards	#303"

(4) Amend Appendix A by changing the edition date to "1990" for the following National Fire Protection Association (NFiPA) Pamphlets: #10, #12B, #14, #15, #17, #17A, #30, #32, #43A, #50, #72E, #80, #82, #99, #418, #495 and #704.

(5) Amend Appendix A and all Articles of the Code by removing all reference to "NFiPA Pamphlets #72A, #72C, #72D, #72F" and in its place list NFiPA Pamphlet #72-90."

(6) Amend Appendix A by adding reference to "NFiPA Pamphlet Number 13D Sprinkler Systems for 1 & 2 Family Dwellings and Mobile Homes, 1991 [~~1989~~] Edition."

(7) Amend Appendix A by changing the Edition date to "1991" for National Fire Protection Association (NFiPA) Pamphlets #13 and #13R.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: March 7, 1992
FILED WITH LRC: March 12, 1992 at 10 a.m.

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

902 KAR 13:050. Training, examination, [~~and~~] certification and recertification.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt **administrative** [~~rules and~~] regulations relating to emergency medical technicians (EMTS). The function of this **administrative** regulation is to establish requirements for training, examination, certification[~~, and renewal~~] and recertification of emergency medical technicians.

Section 1. EMT Training Course Requirements. The training course shall:

(1) Include the Basic Emergency Medical Technician: National Standard Curriculum (Third Edition, 1984) of the U.S. Department of Transportation [~~and such additions, deletions or changes to the curriculum as prescribed by the cabinet~~] and the accompanying text [~~entitled~~] "Emergency Care" (Fifth Edition, 1990), [~~published by~~] The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632. Each of [~~A copy of~~] these publications is incorporated [~~, included~~] by reference. They [~~as if full incorporated herein,~~] shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection and copying [~~between 8 a.m. and 4:30 p.m.,~~] Monday through Friday from 8 a.m. until 4:30 p.m.;

(2) Be not less than 119 [~~at least 103~~] hours in duration;

(3) Be taught by an EMT instructor certified by the cabinet, and at least one (1) EMT instructor-trainee, or one (1) additional EMT instructor;

(4) Have, prior to commencement of the class, a class number assigned by the cabinet;

(5) Be limited to thirty (30) students;

(6) Utilize equipment, texts, **audiovisuals** [~~television tapes~~] and other materials approved by the cabinet;

(7) Have all required equipment available at the training site for the scheduled lessons and not permit sharing of equipment between classes unless the classes are conducted at the same location and the equipment is equally available to all classes; and

(8) Not permit a student to be on call while classes are in session.

Section 2. Responsibilities of the Instructor. (1) The EMT class instructor shall:

(a) Require each student to sign in, on the same date as the lesson to be presented, on an attendance sheet provided by the cabinet;

(b) Submit to the cabinet, two (2) weeks prior to the starting date of the class, a "Basic Course Inventory" form verifying that all equipment, texts, television tapes, and other materials specified are on hand, in proper working order and placed in secure storage;

(c) Submit to the cabinet, within two (2) weeks following the completion of each course:

1. The master "Grade Sheet";
2. "Answer Sheets" for each of the four (4) written examinations;
3. "Final Practical Examination" for each student who completed the class;
4. "Master Attendance Sheet";
5. "Attendance Sheet" for each lesson;
6. "Application for Emergency Medical Technician" for each student **for each student desiring EMT certification**; and
7. The fee prescribed by 902 KAR 13:030, Section 1(1) **for each student desiring EMT certification.**

(2)(a) The following forms are incorporated by reference:

1. "Basic Course Inventory" (1992);
2. "Grade Sheet" (10/71);
3. "Answer Sheet", number one (1), two (2), three (3) and four (4) (1992);
4. "Master Attendance Sheet" (1992);
5. "Attendance Sheet" (EHS-4 9/71);
6. "Application for Emergency Medical Technician" (1992).

(b) They may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday [~~(computerized facsimiles may be substituted provided all required information is provided)~~].

(3) The EMT class instructor may permit more than one (1) lesson absence per student, if the absence is made up:

(a) With the approval of the instructor; or

(b) In a subsequent EMT training course provided the lesson made up is the same one that was missed.

[~~(3) Not be started until completed course inventory form is received by the cabinet verifying that all equipment, texts, television tapes, and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;~~

~~(4) Not share equipment between courses unless such equipment is housed in the same building and is available equally to all EMT classes;~~

~~(5) Utilize equipment, texts, television tapes and other materials approved by the cabinet;~~

~~(6) Be taught by an EMT instructor certified by the Cabinet for Human Resources;~~

~~(7) Have at least one (1) EMT instructor trainee; or one (1) additional EMT instructor;~~

~~(8) Have a class certification number assigned by the cabinet;~~

~~(9) Be limited to thirty (30) students; and~~

~~(10) Not permit more than one (1) lesson absence per student, unless made up at the discretion of the instructor, or made up in a subsequent EMT training course. The lesson made up shall be the same lesson that was missed.~~

~~(11) Require each student to sign in for each lesson on attendance sheets provided by the cabinet.~~

~~(12) Require the instructor at the end of each course to provide the cabinet the following: master grade sheet, answer sheets for all written exams, final practical exams, application for certification with prescribed fee, master attendance form and attendance sheets for each lesson.~~]

Section 3. [~~2.~~] EMT Certification Examination. The cabinet shall prescribe the format and content of the EMT[~~'s~~] certification examination[~~s~~] which shall consist of two (2) parts:

(1) Written.

(a) The written examination shall consist of [~~be in~~] four (4) separate examinations, the fourth to be inclusive of the entire course [~~parts~~].

(b) An absolute overall passing grade of not less than eighty (80) [~~seventy five (75)~~] percent, shall be required for courses which begin after the effective date of this **administrative** regulation. [~~In the event an applicant's overall average is less than seventy five (75) percent, but is seventy (70) percent or more, the applicant may, upon proper application, retake the part in which he made the lowest score. However, should the applicant again fail, he shall be required to retake the entire EMT training course before being eligible for reexamination.~~]

(2) Practical.

(a) The applicant shall [~~successfully~~] pass all required stations [~~parts~~] of the final practical examination. **The practical examination shall be divided into stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The student shall randomly choose the skills from the wild card station on the date of the examination.**

(b) If [~~In the event~~] he fails to [~~successfully~~] pass all required stations [~~portions of the final practical examination~~], he shall be permitted one (1) opportunity to retake the required stations [~~part~~] which he failed to pass.

(c) If [~~However, should~~] the applicant fails again [~~fail~~] to pass the required stations [~~particular part of the examination~~], he shall be required to retake the entire EMT training course before being eligible for reexamination.

(3) An instructor who is employed by the same ambulance service, public service or industrial organization for whom an [~~the~~] EMT class is conducted shall not evaluate in the practical examination of that class.

[~~Section 3. Certification of EMTs and EMT-A. The cabinet shall certify EMTs based upon the type of service to be rendered. An EMT engaged in ambulance service shall be issued certification as an "emergency medical technician-ambulance (EMT-A)."~~]

Section 4. Expiration of Certification. An [~~All~~] EMT certificate[~~s~~] shall expire two (2) years from the date of issuance.

Section 5. Recertification [~~Renewal of Certification; In-service Training or~~] Continuing Education Requirements. (1) [~~By September 1, 1991, in order to renew a certificate, the emergency medical technician shall:~~] During his period of certification, an EMT shall attain at least twenty-four (24) continuing education hours, with no less than twelve (12) hours being practical skills in a structured instructional setting. Effective July 1, 1992, a minimum of two (2) of the twenty-four (24) contact hours shall be in Acquired Immune Deficiency Syndrome (AIDS) education as required by KRS 214.610 [~~from a curriculum approved by the cabinet~~].

(2) An EMT shall:

(a) Maintain [~~of which shall be in hands-on skills, of in-service training or continuing education, or a combination thereof, and in addition shall~~] evidence of current certification in cardiopulmonary resuscitation (CPR) as required by:

1. The American Heart Association; or

2. The American National Red Cross; **or** [~~and~~]

3. The National Safety Council; and

(b) Submit evidence of continuing education and current CPR certification to the cabinet prior to the expiration of his EMT certification.

(3) An applicant for recertification shall receive credit for completion of [~~(1) Subject matter requirements for EMT in-service training or continuing education.~~

~~(a) To receive credit for in-service training or continuing education, the applicant for recertification may take in-service training or~~] continuing education on a [~~any~~] subject:

(a) Covered by the United States Department of Transportation basic emergency medical technician curriculum, outlined in Section 1 of this **administrative** regulation; [~~3rd edition,~~] or

(b) [~~any subject~~] For which instruction is:

1. Preapproved; and

2. Authorized by the cabinet [~~for Human Resources for the emergency medical technician program in Kentucky~~].

(4) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(5) Training received as a requirement for continuing education as a physician, registered nurse, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 shall be eligible for continuing education credit if it meets the criteria of subsection (2) of this section.

(6) [~~(5)~~] The applicant for recertification shall submit evidence of successful completion of instruction in at least six (6) different subject areas, with a maximum of four (4) hours per subject area, of emergency medical technician course subject matter instruction or skills instruction[~~, in addition to cardiopulmonary resuscitation~~].

(7)(a) The EMT shall submit to the cabinet a record of his continuing education on an "EMT Official Record of Continuing Education/Inservice" (EMT/R-90) form.

(b) The form shall:

1. Be signed by the EMT;

2. Contain a certification as to the truth of the information supplied; and

3. Include a statement that misrepresentation of the information may be cause for suspension or loss of certification.

(c) "EMT Official Record of Continuing Education/Inservice", (EMT/R-90), is incorporated by reference and may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m. Monday through Friday.

(8) [~~(6)~~] The following shall [~~are~~] not be eligible for credit as [~~in-service training or~~] continuing education:

(a) [~~1.~~] Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities.

(b) [~~2.~~] Instruction in material, techniques, or procedures not authorized to be performed by emergency medical technicians.

Section 6. EMT Instructors for Continuing Education. (1) [~~(d) Evidence of training and CPR certification shall be submitted to the cabinet not less than thirty (30) days before the expiration of the EMT's certification on forms supplied by the cabinet.~~

~~(e) The form provided by the cabinet shall contain a certification as to the truth of the information supplied and a statement that all training claimed conforms to the requirements of this regulation and a warning that submission of false information constitutes a violation of law.~~

~~(f) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.~~

~~(g) Training received as a requirement for continuing education in medicine, nursing, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 is eligible for in-service training or continuing education credit if it meets the criteria of paragraph (a) of this subsection.~~

~~(2) Instructors for EMT in-service training and continuing education.~~] The following persons shall be [~~are considered as~~] qualified to conduct [~~in-service training and~~] continuing education courses for emergency medical technicians:

(a) A physician licensed pursuant to KRS Chapter 311;

(b) A registered nurse licensed pursuant to KRS Chapter 314;

(c) A paramedic certified by the State Board of Medical Licensure;

(d) An emergency medical technician instructor or instructor trainer certified by the cabinet [~~for Human Resources~~];

(e) An instructor who:

1. Is certified by a state or federal agency to teach a subject; and

2. Teaches [~~who is teaching within the area authorized by his certification~~] a course which qualifies [~~will qualify~~] for emergency medical technician in-service training or continuing education; or

(f) Other presenters who are preapproved by the cabinet as **persons who are uniquely qualified by experience or education**.

(2) As applicable, a [(f)] physician[s], registered nurse[s], paramedic[s] or emergency medical technician instructor[s] currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of subsection (1)(a) through (e) of this section [paragraphs (a) through (e) of this subsection, as applicable].

Section 7. [(3)] Cardiopulmonary Resuscitation Requirement. (1) During the two (2) year [second year of the] certification period, the EMT shall maintain current [obtain or renew] certification in cardiopulmonary resuscitation and related techniques as follows:

(a) The course shall be conducted:

1. By, or under the authority of, the American Heart Association or the American National Red Cross; or

2. [under its authority] By an instructor certified by the American Heart Association or the American National Red Cross; **or**

3. By an instructor certified by the National Safety Council;

(b) The course shall be:

1. Taught for record; and

2. [shall be] Certified by the instructor to the American Heart Association or the American National Red Cross as meeting all applicable standards of the organization;

(c) The course shall provide instruction and testing in:

1. One (1) rescuer cardiopulmonary resuscitation;

2. Two (2) rescuer cardiopulmonary resuscitation;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

5. Techniques for relief of obstruction of the airway;

6. Cardiopulmonary resuscitation of infants and small children; and

7. Mouth to mouth, [/] mouth to nose or mouth to stoma resuscitation for adults, small children, and infants.

(d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (1)(c) [(3)] of this section.

(2) [(c)] The applicant for renewal of certification shall forward to the cabinet [for Human Resources] a copy of both sides of the certificate issued to him indicating successful completion of the CPR course as required in Section 5(1)(d) of this **administrative** regulation.

Section 8. [(4) In service training and] Continuing Education Requirements for Emergency Medical Technician Instructors and Instructor Trainers. (1) An EMT instructor and an EMT instructor trainer shall attain twenty-four (24) continuing education hours during his certification period.

(2) [(a)] An emergency medical technician instructor or instructor trainer may [shall] meet the [in service training or] continuing education requirements for recertification by:

(a) Conducting [in the following manner:

1. Conduct] an emergency medical technician course;

(b) Teaching [or

2. Teach] one (1) or more lessons of an emergency medical technician course;

(c) Teaching [or

3. Teach] one (1) or more lessons of an in-service training or continuing education course;

(d) Conducting [or

4. Conduct] a final practical examination or challenge examination for an emergency medical technician course; or

(e) Conducting an EMT instructor training course.

(3) During his two (2) year certification period [and

(b) If any of paragraph (a)1 through 4 of this subsection is claimed for recertification, the total number of hours spent in instructional or examination continuing education shall not be less that sixteen (16) hours. Any combination totaling sixteen (16) or more hours may be used; and

(c) An emergency medical technician instructor trainer may utilize time spent in conducting an emergency medical technician instructor course or evaluation in lieu of time required in paragraph (a) of this subsection; and

(d)] an emergency medical technician instructor or instructor trainer shall attend:

(a) At least one (1) [either the] annual emergency medical technician instructor conference; or

(b) At least one (1) [the] annual training session for newly appointed instructors.

(4) Continuing education hours obtained [Time spent] at these [such] conferences may be used as credit toward the time required in subsection (2) of this section.

(5) An [paragraph (a) or (b) of this subsection; and

(c) Additionally, each] emergency medical technician instructor or instructor trainer shall:

(a) Meet the cardiopulmonary resuscitation requirement outlined in Section 7(1) of this **administrative** regulation;

(b) [or shall] Teach a cardiopulmonary resuscitation course for record; or

(c) [shall] Teach the cardiopulmonary resuscitation portion of the emergency medical technician course to emergency medical technician students.

Section 9. [6.] Temporary Extension of Certification. (1) Upon submission of a written request prior to the certification expiration date, an EMT or EMT instructor may be granted one (1) six (6) month extension per certification period. Six (6) months following the effective date of this **administrative** regulation, the cabinet shall grant only a thirty (30) day grace period following a certification expiration date to allow for administrative processing.

(2) Continuing education hours shall be obtained prior to the certification expiration date.

(3) Upon written application to the cabinet, an EMT or EMT instructor who is a member of a National Guard or military reserve unit and who is called to active duty by presidential order under sections 121 and 673b of Title 10 U.S. Code, may be given an extension for a period up to one (1) year after the individual's release from active duty or return to the United States, whichever occurs first.

(4) An EMT who has not renewed his EMT certification within the time limitations specified in subsection (1) or (2) of this section may be eligible for certification by:

(a) Successfully completing the reentry challenge examination as outlined in Section 10 of this **administrative** regulation; or

(b) By retaking and successfully completing the entire EMT training course. [Certificate. Upon a showing of undue hardship in obtaining the required in service training or continuing education for renewal, the cabinet may extend a certificate for an additional six (6) months.]

Section 10. [7.] Challenge Examination Procedure. **(1) For those persons specified in subsection (3) of this section, a challenge examination may be taken in order to qualify or requalify the person as an emergency medical technician. This challenge examination shall be in lieu of the requirement for completion of the Kentucky EMT course and the passing of the Kentucky EMT examinations. The provisions of this section shall not prohibit any person listed in subsection (3) of this section from taking and successfully completing the Kentucky EMT course and the Kentucky EMT examinations.**

(2) [(1)] The standards for the Kentucky Challenge Examination shall be the same as the standards for the EMT certification examination outlined in Section 3 of this **administrative** regulation.

(3) [(2)] The following shall be eligible to take the Kentucky Challenge Examination:

(a) U.S. military personnel on active duty, or within a period of one (1) year from the date of discharge, who submit:

1. Proof of having successfully completed training equivalent to the Department of Transportation EMT curriculum outlined in Section 1 of this **administrative** regulation; and

2. Proof of current CPR certification.

(b) An EMT certified in another state who submits proof of current EMT and CPR certification.

(c) An EMT whose Kentucky certification has not been expired for more than five (5) years and who was in good standing when his certification expired.

(4) [(3)] An application for the Kentucky Challenge Examination shall submit:

(a) A letter of request to take the examination;

(b) The fee prescribed by 902 KAR 13:030, Section 1(2); and

(c) A completed "Application for Emergency Medical Technician Challenge Only", (1992).

(5) [(4)] The "Application for Emergency Medical Technician

Challenge Only" form (1992) is incorporated by reference and may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

(6) [~~(5)~~] An applicant [~~Upon proper application, to include a letter from an employer demonstrating need for certification, and payment of the prescribed fee, the following may take the Kentucky "Challenge Examination," consisting of both written and practical parts, the standards for such examination being the same as for an emergency medical technician course:~~

~~(1) U.S. Military Corpsmen, within a period of one (1) year from the date of discharge, who have either a:~~

~~(a) U.S. Army MOS 91B or 91C; or~~

~~(b) Its equivalent for other services.~~

~~(2) Emergency medical technicians, currently certified in other states.~~

~~(3) Individuals~~] whose emergency medical technician certification has not been expired for [~~not~~] more than five (5) years and who was [~~were~~] in good standing when his certification expired, shall submit the following additional documentation at the time of application:

(a) Proof of previous Kentucky emergency medical technician certification; and

(b) Proof of current CPR certification which meets the requirements of Section 7(1)(a) and (b) of this **administrative** regulation [~~A confirmation statement of intent to remain active~~]; **and**

(c) Proof of having completed four (4) hours of MAST Trouser training, taught by an instructor who meets the criteria in Section 6 of this administrative regulation; and

(d) [~~(c)~~] Proof of completion of at least twenty-four (24) [~~sixteen (16)~~] hours of [~~in service training or~~] continuing education taught by an instructor who meets [~~meeting~~] criteria [~~as~~] in Section 6 [~~5(2)~~] of this administrative regulation.

(7) [~~(6)~~] Continuing education hours shall [~~, to~~] include:

(a) A minimum of one (1) hour in each of the following areas:

1. Airway management;
2. Diabetic emergencies;
3. Cardiovascular emergencies;
4. Multiple trauma;
5. Overdose and [~~/~~] poisoning;
6. EMS related legal issues; [~~medical/legal (EMS related),~~] and
7. Patient assessment.

(b) No less than two (2) continuing education hours in Acquired Immune Deficiency Syndrome (AIDS) education equivalent to the requirement specified in Section 5(1)(b) of this **administrative** regulation.

Section 11. Exemptions from EMT **Administrative** Regulations. The Kentucky certification requirements for an EMT shall not apply to:

(1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or

(2) An EMT certified in another state who comes into Kentucky:

(a) To transport patients into or through the state; or

(b) For the purpose of returning a patient to his out-of-state residence. [~~In addition, the applicant shall submit proof of having completed four (4) hours of MAST Trouser Training, taught by an instructor meeting criteria as in Section 5(2) of this regulation; and~~

~~(d) Proof of current certification in cardiopulmonary resuscitation as required by Section 5(3) of this regulation.~~

Section 12. 902 KAR 13:040 related to "Exemptions" from EMT regulations is hereby repealed.

C. HERNANDEZ, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: March 6, 1992
FILED WITH LRC: March 11, 1992 at 11 a.m.

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

902 KAR 45:005. Retail food code.

RELATES TO: KRS 219.011 to 219.081, 219.991(1)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 219.031
NECESSITY AND FUNCTION: Senate Bill 30 of the 1990 General Assembly combines food service requirements of KRS 219.011 to 219.081 with KRS 217.005 to 217.215 and 217.992(4), the Kentucky Food, Drug and Cosmetic Act. This act authorizes the Cabinet for Human Resources to regulate food service establishments and retail food stores in Kentucky. The function of this **administrative** regulation is to establish a uniform code for the regulation of all food service establishments and retail food stores within the Commonwealth of Kentucky for the purpose of protecting the public health.

Section 1. Definitions. As used in this **administrative** regulation:

(1) "Adulterated food and food products" means any food or food product adulterated as provided by KRS 217.025 of the Kentucky Food, Drug and Cosmetic Act.

(2) "Approved" means acceptable to the cabinet based on determination as to conformance with appropriate standards and good public health practices.

(3) "Chemical preservative" means any chemical that, when added to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

(4) "Closed" means without openings large enough for the entrance of insects. An opening of one-sixteenth (1/16) inch or less is closed.

(5) "Corrosion-resistant material" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use environment.

(6) "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(7) "Employee" means the permit holder, individuals having supervisory or management duties and any other person working in a food handling establishment.

(8) "Equipment" means stoves, ranges, hoods, ovens (including microwave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, sinks, tables, display cases, meat blocks, wrapping machines, scales, check-out counters, vehicles and similar items.

(9) "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(10) "Hermetically sealed container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(11) "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

(12) "Liquid waste" means the discarded fluid discharge from any fixture, appliance, area or appurtenance.

(13) "Misbranded food and food products" means any food or food product misbranded as provided by KRS 217.035 of the Kentucky Food, Drug and Cosmetic Act.

(14) "Mobile food unit" means a food service establishment that is designed to be readily movable.

(15) "Packaged" means bottled, canned, cartoned, or securely wrapped at a food processing establishment.

(16) "Package" means any container or wrapping in which any food is enclosed for use in the delivery or display to retail purchasers, but does not include: shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; containers used for tray pack displays in retail establishments; transparent wrappers or containers which do not bear

written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the Federal Food, Drug and Cosmetic Act.

(17) "Perishable food" means food of such type or in such condition or physical state that it may spoil or otherwise become unfit for human consumption.

(18) "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217B.040(2).

(19) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting the:

1. Rapid and progressive growth of infectious or toxigenic microorganisms; or

2. Slower growth of Clostridium botulinium.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or

2. Is raw seed sprouts.

(d) The following are excluded:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) value of 0.85 or less;

3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Food in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinium cannot occur.

(20) "Pushcart" means a nonself-propelled vehicle limited to serving nonpotentially hazardous foods or commissary-wrapped food maintained at safe temperatures or limited to the preparation and serving of frankfurters.

(21) "Reconstituted" means dehydrated food products combined with water or other liquids.

(22) "Safe temperature" means, when considering potentially hazardous food, food temperature of forty-five (45) degrees Fahrenheit or below and 140 degrees Fahrenheit or above, except for frozen food, which should be stored at zero degrees Fahrenheit, or less.

(23) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(24) "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

(25) "Shellfish" means clams, mussels, or oysters.

(26) "Sewage" means liquid waste containing fecal material or organic material from garbage grinders.

(27) "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping material including bags, toothpicks and similar articles which are designed for one-time, one-person use and then discarded.

(28) "Tableware" means all multiuse eating and drinking utensils.

(29) "Utensil" means any food-contact implement used in the storage, preparation, transportation, dispensing, service or sale of food.

(30) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils such as kitchenware and tableware.

(31) "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Section 2. Applicability. The requirements of this **administrative** regulation are applicable to all food service establishments, retail food stores, or a combination of both within the same establishment, as defined by KRS 217.015, located within the Commonwealth of Kentucky.

Section 3. Application for Permit to Operate. (1) Any person desiring to operate a food service establishment or a retail food store shall make written application for a permit on form DFS-208 provided by the cabinet.

(2) If the application is for a retail food store and food service combined operation in one (1) establishment under one (1) ownership, the application shall:

(a) Designate: "retail food and food service combination".

(b) ~~[Such application shall]~~ Include the name and address of the applicant;

(c) The location and type of the proposed food service establishment; and

(d) The signature of the applicant.

(3) If the application is for a temporary food service establishment, it shall also include the dates of the proposed operation.

(4) Prior to approval of an application for permit, the cabinet shall:

(a) Inspect the proposed food service establishment to determine compliance with the provisions of this **administrative** regulation; **and**

(b) ~~[. The cabinet shall]~~ Issue a permit to the applicant if the inspection reveals that the proposed food service establishment complies with the requirements of this **administrative** regulation.

Section 4. Food Supplies. (1) Food shall be wholesome and free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all applicable federal and state laws relating to food and food labeling. The use of food and food products canned, prepared or processed in the home is prohibited.

(2) Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the Grade A quality standards as established by law and regulation. Dry milk and milk products shall be made from pasteurized milk and milk products.

(3) All shellfish, fresh or frozen shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, mussels, clams) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and the interstate certification number issued by the state or foreign shellfish control agency and shall comply with applicable cabinet **administrative** regulations. Shellstock source information shall be maintained on the container until it is empty and then shall be kept on file at the establishment for ninety (90) days.

(4) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid or pasteurized dry egg or egg products shall be used; except that hard-boiled peeled eggs, commercially prepared and packaged, may be used.

(5) All meat and meat products, poultry and poultry products shall have been inspected and passed for wholesomeness under an official governmental regulatory program.

(6) All fish and fish products shall be from approved sources that comply with all applicable federal and state laws relating to food and food labeling.

Section 5. Food Protection. (1) Food shall be protected while being stored, prepared, displayed, served, or transported from potential contamination including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage or condensation. The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times, except during necessary periods of preparation and service. Shell eggs shall be stored at sixty (60) degrees Fahrenheit or below.

(2) Precluding unsafe additives. Food shall be protected against contamination resulting from the addition of unsafe or unapproved food or color additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration Subchapter B, Part 170 - Food Additives.

(3) Spoiled, damaged, returned or detained food items shall be segregated from other foods pending final disposition. A designated area shall be established for temporarily holding returned and damaged food items awaiting disposition. The area shall be marked or identified as, "Not for sale or consumption".

(4) In the event of fire, flood, power outage, water cutoff, or similar catastrophic event that might result in the contamination of food, or that might prevent potentially hazardous foods from being held at required temperatures, the person in charge shall immediately contact the cabinet. Upon receiving notice of this occurrence, the cabinet shall take whatever action that it deems appropriate to protect

the public health.

Section 6. Food Storage. (1) Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.

(2) Containers of food shall be stored a minimum of six (6) inches above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:

(a) Metal pressurized beverage containers, and cased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture;

(b) Containers may be stored on dollies, racks or pallets, provided such equipment is easily movable.

(3) Food or containers of food shall not be stored under exposed sewer or nonpotable water lines, except for automatic fire protection sprinkler heads. Food shall not be stored in toilet rooms or toilet room vestibules.

(4) Food not subject to further washing or cooking before serving shall be stored in a way that protects it against contamination from food requiring washing or cooking. Food shall be stored in such a way that protects it from cross-contamination.

(5) Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice or water.

(6) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, flour, meal and similar products, not stored in the container or package in which it was obtained shall be stored in a container identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of forty-five (45) degrees Fahrenheit or below during storage. Each mechanically refrigerated facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers accurate to plus or minus three (3) degrees Fahrenheit may be used in lieu of indicating thermometers.

(8) The temperature of potentially hazardous foods requiring refrigeration shall be forty-five (45) degrees Fahrenheit or below except during necessary periods of preparation.

(9) Frozen foods shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit or below.

(10) Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head, provided: tubes, cold plates and etc., are kept clean, in good repair, and are constructed from approved materials. Ice used for cooling and maintaining cold temperatures of stored food and food containers shall not be used for human consumption.

(11) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of 140 degrees Fahrenheit or above during storage. Each hot food facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to plus or minus three (3) degrees Fahrenheit, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer accurate to within plus or minus three (3) degrees Fahrenheit shall be readily available and used by the establishment personnel to check internal food temperatures.

(12) The internal temperature of potentially hazardous foods requiring hot storage shall be 140 degrees Fahrenheit or above except during necessary periods of preparation and such hot potentially hazardous foods to be transported shall be held at an internal temperature of 140 degrees Fahrenheit at all times during transportation.

Section 7. Food Preparation. (1) Food shall be prepared with the least possible manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

(2) Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served; this requirement shall not apply to whole, uncut fruits and raw vegetables for sale in retail food stores.

(3) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit prior to being placed in steam tables or other hot storage facilities except that:

(a) Poultry, poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process.

(b) Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit.

(c) Rare roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, and rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit unless otherwise ordered by the immediate customer.

(4) Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.

(5) Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

(6) Potentially hazardous foods that were cooked and then refrigerated shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bainmaries, warmers, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

(7) Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one (1) gallon in capacity and cooled to forty-five (45) degrees Fahrenheit or below.

(8) Metal stem-type numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided and used to assure attainment of proper internal cooking temperatures of all potentially hazardous foods.

(9) Potentially hazardous foods shall be thawed:

(a) In refrigerated units in a way that the temperature of the food does not exceed forty-five (45) degrees Fahrenheit; or

(b) Under potable running water of a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or

(c) In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

Section 8. Food Display and Service. (1) Potentially hazardous foods shall be kept at a temperature of forty-five (45) degrees Fahrenheit or lower or at a temperature of 140 degrees Fahrenheit or higher during display and service.

(2) Food, except raw fruits and vegetables, on display shall be protected from consumer contamination by the use of package overwrapping; counter service line or salad bar food guards; display cases; or other effective means.

(3) Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement if the refilling process is contamination free. Clean tableware shall be made available and a sign shall be posted in self-service food area to inform customers of this requirement.

(4) Suitable utensils shall be used by employees or provided for consumers self-service to avoid unnecessary contact with food. Between uses during service, utensils shall be:

(a) Stored in food containers with the food they are being used to serve; or

(b) Stored clean and dry; or

(c) Stored in running water; or

(d) In the case of dispensing utensils and malt collars used in serving frozen desserts, stored either in a running water dipper well, or clean and dry.

(5) Ice for consumer use shall be dispensed only with scoops, tongs, or other ice-dispensing utensils by either employees or self-service or through automatic self-service ice-dispensing equipment. Between uses during service, ice-dispensing utensils and ice receptacles shall be stored in a way that protects them from contamination.

(6) Sugar, condiments, seasonings, and dressings for self-service use shall be provided only in individual packages or from dispensers or containers that protect their contents.

(7) Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one (1) pint in capacity, or served from an approved bulk milk dispenser. When a bulk dispenser for milk or milk products is not available and portions of less than one-half (1/2) pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half (1/2) gallon capacity.

(8) Cream, half and half, or nondairy creamers or whitening agents shall be provided in an individual service container, protected pour-type pitcher or drawn from a refrigerated dispenser designed for such service; milk, cream, half-and-half or nondairy creamers in unopened commercially filled containers may be sold without restriction as to container size in retail food stores.

(9) Once served to a consumer, individual portions of food shall not be served again. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome, may be re-served.

Section 9. Food Transportation. During transportation, food and food utensils shall be in covered containers or completely wrapped or packaged so as to be protected from contamination. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this **administrative** regulation relating to protection and storage of food. Cold, potentially hazardous foods shall be maintained at forty-five (45) degrees Fahrenheit or below during transportation.

Section 10. Employee Health. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment, except as noted in Section 38 of this **administrative** regulation.

Section 11. (1) Personal Cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking or using the toilet. Employees shall keep their fingernails clean and trimmed.

(2) Handwashing shall take place at a handwashing lavatory or designated service sink and not at food preparation sink or at a warewashing sink.

Section 12. Clothing. (1) The outer clothing of all employees shall be clean and suitable for the task to be performed.

(2) Hairnets, hats, scarfs, or similar hair coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas of establishments shall arrange their hair to prevent the contamination of food, equipment and utensils.

Section 13. Employee Practices. (1) Employees shall eat food, drink, or use tobacco only in designated areas. Such an area shall not be designated if consuming food there might result in contamination of other food, equipment, utensils, or other items needing protection.

(2) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

(3) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.

(4) Employees shall remove all insecure jewelry, and during periods when food is manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

Section 14. Equipment and Utensils Materials. (1) Multiuse equipment and utensils shall be made and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils and single-service articles shall not impart odors, color or taste, nor contribute to the contamination of food.

(2) If soft solder or hard solder (silver solder) is used, it shall be composed of safe materials and be corrosion resistant.

(3) Hard maple or equivalently nonabsorbent materials that meet the general requirements set forth in subsection (1) of this section may be used for cutting blocks, cutting boards, salad bowls, bakers' tables, and wooden paddles in confectionary operations for pressure scraping kettles when manually preparing confections at a process temperature of 230 degrees Fahrenheit or above. The use of wood as a food-contact surface under other circumstances is prohibited, except in the case of single service articles such as chopsticks, coffee stirrers, ice cream spoons and similar articles.

(4) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in subsection (1) of this section are permitted for repeated use. The use of equipment and utensils made of materials not meeting the requirements of this section is prohibited.

(5) Mollusk and crustacea shells may be used only once as a serving container. Further reuse of such shells for food service is prohibited.

Section 15. Equipment and Utensils Design and Fabrication. (1) All equipment and utensils, including plastic ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult to clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited, except that in equipment, such as ice makers or hot oil cooking equipment and hot oil filtering systems, the use of such threads shall be minimized.

(2) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(3) Sinks, dish tables, and drain boards shall be self-draining.

(4) Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(a) Without being disassembled; or

(b) By disassembling without the use of tools; or

(c) By easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.

(5) Pipes, tubes, valves, and lines contacting food and intended for in-place cleaning shall be so designed and fabricated that:

(a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(b) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(c) The system is self-draining or capable of being completely evacuated.

(6) Thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to plus or minus three (3) degrees Fahrenheit.

(7) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated so as to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(8) Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food-contact surfaces. Filters where used, shall be readily removable for cleaning and replacement.

Section 16. Equipment Installation and Location. (1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, nonpotable water lines, stairwells or other sources of contamination. This prohibition does not apply to automatic fire protection sprinkler heads.

(2) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or mounted on legs at least four (4) inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(3) Equipment is portable within the meaning of subsection (2) of this section if:

(a) It is small and light enough to be moved easily by one (1) person; and

(b) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(4) Floor mounted equipment, unless readily movable, shall be:

(a) Sealed to the floor; or

(b) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or settling underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection; or

(c) Elevated on legs at least six (6) inches off the floor, except that vertically mounted floor mixers may be elevated as little as four (4) inches off the floor if no part of the floor under the mixer is more than six (6) inches from cleaning access. Unless sufficient space is provided for easy cleaning between and behind each unit of floor mounted equipment, the space between it and adjoining equipment units and between it and adjacent walls shall be closed or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.

(5) Aisles and working spaces between units of equipment and between equipment and walls should be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(6) Equipment which was installed prior to the effective date of this **administrative** regulation and which does not meet fully all of the requirements of this section, shall be deemed acceptable, if it is in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are nontoxic. Such equipment shall be so located and installed as to enable reasonable compliance with the requirements of this section.

Section 17. Equipment and Utensil Cleaning and Sanitization. (1) Tableware shall be cleaned and sanitized after each use.

(2) Kitchenware and food-contact surfaces of equipment used in the preparation, service, display or storage of potentially hazardous foods shall be cleaned and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

(4) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day, except that this shall not apply to hot oil cooking and filtering devices and systems. Food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

(5) Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(6) Cloths used during service for wiping food spills on food-contact surfaces shall be clean, dry, and used for no other purpose. Moist cloths used for wiping food-contact surfaces of equipment shall be clean and rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section. Moist cloths, or sponges, used for cleaning nonfood-contact surfaces shall be clean and used for no other purpose. These cloths shall be rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section.

(7) When manual cleaning and sanitizing is used, sinks shall be cleaned prior to use. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil. Equipment and utensils shall be thoroughly washed in a hot detergent solution at a temperature of at least ninety-five (95) degrees Fahrenheit in the first compartment, rinsed in the second compartment and shall be sanitized in the third compartment according to one (1) of the methods included in paragraph (a)1 through 4 of this subsection.

(a) All tableware and the food-contact surfaces of all other equipment and utensils shall be sanitized by:

1. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least 170 degrees Fahrenheit; or

2. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least seventy- five (75) degrees Fahrenheit; or

3. Immersion for at least one (1) minute in a clean solution containing at least twelve and five-tenths (12.5) parts per million of available iodine and having a pH not higher than five (5.0) and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

4. Immersion in a clean solution containing other chemical sanitizing agents approved by the department that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute; or

5. Treatment with steam free from harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under subsection (7)(a)4 of this section when used for immersion sanitization in the case of equipment too large to sanitize by immersion.

(b) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "B", Substances Utilized to Control the Growth of Microorganisms, Section 178.1010 Sanitizing Solutions, and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(c) A three (3) compartment sink shall be used if cleaning and sanitization of equipment or utensils is done manually; retail food establishments that were operating with a valid and effective permit prior to the effective date of this **administrative** regulation not having a three (3) compartment sink that can demonstrate an acceptable procedure for cleaning and sanitizing equipment and utensils may be exempt from this requirement by the cabinet. Sinks shall be large enough to permit the complete immersion of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water. Suitable equipment shall be made available if cleaning and sanitizing cannot be accomplished by immersion. Those retail food stores that do not cut, process or package any foods, but purchase and offer for sale only prepackaged foods shall not be required to provide a three (3) compartment sink.

(d) Dish tables or drain boards of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the warewashing facilities.

(e) When hot water is used for sanitizing, the following facilities shall be provided and used:

1. An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170 degrees Fahrenheit; and

2. A numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit convenient to the sink that can be used for frequent checks of water temperature; and

3. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(8) When mechanical cleaning and sanitizing is used, cleaning and sanitizing may be done by spray-type or immersion warewashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. Such machines and devices shall be properly installed and maintained in good repair. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.

(a) The pressure of water supplied to spray-type warewashing machines shall be not less than fifteen (15) or more than twenty-five (25) pounds per square inch measured in the water line immediately adjacent to the machine. A suitable gauge cock shall be provided immediately upstream from the final rinse sprays to permit checking the flow pressure of the final rinse water.

(b) Easily readable numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided that indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(c) Rinse water tanks shall be so protected by baffles or other effective means as to minimize the entry of wash water into the rinse water. Conveyors in warewashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications attached to the machines.

(d) Drain boards shall be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the warewashing facilities.

(e) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to their being cleaned in a warewashing machine. After flushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are subject to the unobstructed application of detergent wash and clean rinse waters and that permits free draining. Clean rinse water shall remove particulate matter and detergent residues. All warewashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(9) When chemicals are used for sanitization, they shall be automatically dispensed in such concentration and for such a period of time as to provide effective bactericidal treatment of equipment and utensils. Wash water shall be kept clean. In machines using chemicals for sanitization (single-tank, stationary-rack, door-type machines, and spray-type glass washers), the temperature of the wash water shall be not less than 120 degrees Fahrenheit. The sanitizing rinse water shall be not less than seventy-five (75) degrees Fahrenheit nor less than the temperature specified by the machine manufacturer.

(10) Where machines using hot water sanitization are used, wash waters and pumped rinse waters shall be kept clean. Water shall be maintained at not less than the temperatures stated in paragraphs (a) to (e) of this subsection; existing machines not fully meeting the requirements of this subsection may be acceptable, if capable of meeting such time and temperature requirements as are acceptable by the cabinet. Wash and pumped rinse temperatures shall be measured in the respective tanks, and final rinse temperatures shall be measured at the manifold.

(a) Single tank, stationary rack, dual temperature machine:
1. Wash temperature: 150 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(b) Single tank, stationary rack, single temperature machine:
1. Wash temperature: 165 degrees Fahrenheit.
2. Final rinse temperature: 165 degrees Fahrenheit.

(c) Single tank, conveyor machine:
1. Wash temperature: 160 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(d) Multiple tank, conveyor machine:
1. Wash temperature: 150 degrees Fahrenheit.
2. Pumped rinse temperature: 160 degrees Fahrenheit.
3. Final rinse temperature: 180 degrees Fahrenheit.

(e) Single tank, pot, pan, and utensil washer (either stationary or moving rack):
1. Wash temperature: 140 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(11) All equipment and utensils shall be air-dried.

Section 18. Equipment and Utensil Storage. (1) Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, and bowls shall be handled without contact with inside surfaces or with surfaces that contact the user's mouth.

(2) Cleaned and sanitized utensils and movable equipment shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer or nonpotable water lines. This requirement does not apply to automatic fire protection sprinkler heads.

(a) Utensils shall be air-dried before being stored or shall be stored in a self-draining position on suitably located racks.

(b) Wherever practical, stored utensils shall be covered or inverted. Facilities for the storage of spoons, knives, and forks shall be provided and shall be designed to present the handle to the employee or consumer.

(3) If presetting is practiced, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period; and after any place at a table is occupied.

(4) Single-service articles shall be stored at least six (6) inches above the floor in closed cartons or containers which protect them from contamination.

(a) Single-service articles shall be commercially packaged for individual use or shall be available to the consumer from a dispenser in a way that prevents contamination of surfaces that may contact food or the user's mouth. Handling of single-service articles in bulk shall be conducted in a way that protects them from contamination. Storage shall not be in toilet rooms or vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.

(b) Single-service articles shall be used only once.

Section 19. Sanitary Facilities and Controls. (1)(a) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available.

(b) If a public water supply of a municipality or a water district is not available, the supply for the establishment shall be developed and approved pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection.

(c) If a public water supply of a municipality or water district becomes available, connections shall be made to it and the private supply shall be discontinued.

(d) Retail food stores holding a valid and effective permit prior to the effective date of this **administrative** regulation shall not be required to have hot and cold running water if:

1. Only prepackaged foods are sold; or

2. Cutting and slicing is limited to ready-to-eat, cold-cut foods, and performed in a sanitary manner complying with this **administrative** regulation.

(e) Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils or containers are washed.

(f) Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "D", Specific Usage Additives Section 173.310 Boiler Water Additives.

(2) Bottled and packaged potable water shall be obtained from a source that complies with all applicable laws and regulations and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original containers.

(3) All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed of approved materials and operated pursuant to applicable laws and regulations.

Section 20. Sewage. All sewage shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection and the cabinet; if a public sewerage system becomes available, connections shall be

made thereto and the private sewerage system shall be disconnected. Only nonwater- carried disposal methods which have been approved by the cabinet for temporary use shall be used and operation of such facilities shall be in conformance with applicable state laws and regulations.

Section 21. Plumbing. (1) All plumbing shall be sized, installed, and maintained pursuant to the State Plumbing Code. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or source of pollution through which the safe water supply might become contaminated. All reservoir-type and other produce foggers or misters shall be operated, maintained, and cleaned in a manner consistent with the manufacturer's most recent specifications.

(2) A nonpotable water system is permitted only for purposes such as air-conditioning and fire protection and only if the system is installed pursuant to applicable state laws and **administrative** regulations and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The potable water system shall be installed to preclude the possibility of backflow. Devices to protect against backflow and backsiphonage shall be installed at all fixtures and equipment wherever backflow or backsiphonage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps shall be located to be easily accessible for cleaning.

(5) Except for properly trapped open sinks, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment or utensils are placed.

Section 22. Toilet Facilities. (1) In existing food service establishments, adequate toilet facilities shall be provided and shall be so located as to be readily accessible to employees at all times. In new establishments, or establishments that are extensively altered, toilet facilities shall be provided pursuant to the requirements of the State Plumbing Code.

(2) Toilets and urinals shall be designed to be easily cleanable.

(3) Toilet room doors shall be solid, tight-fitting, and self- closing, and shall be closed except during cleaning or maintenance. Doors may be louvered if installed pursuant to the State Fire Marshal's **administrative** regulations.

(4) Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and the receptacles in toilet rooms used by women shall be covered.

Section 23. Lavatory Facilities. (1) Lavatories shall be installed pursuant to the State Plumbing Code and shall be equipped with hot and cold running water or running water tempered by means of a mixing valve or combination faucet. Steam mixing valves are prohibited. Hand cleansing soap or detergent, and approved sanitary towels or other approved hand drying devices are to be conveniently located at each lavatory. If disposable towels are used, waste receptacles shall be located near the lavatory. Common towels are prohibited.

(2) Lavatories shall be located within or immediately adjacent to all toilet rooms. In all new establishments, and establishments which are extensively altered, lavatories shall be conveniently located within the food preparation area and warewashing area. Sinks used for food preparation or for washing equipment or utensils shall not be used for hand- washing.

(3) Lavatories, soap dispensers, and hand drying devices and all related facilities shall be kept clean and in good repair.

Section 24. Garbage and Refuse. (1) Garbage and refuse shall be kept in durable insect-proof and rodent-proof containers that are leak-proof and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and may be used for storage inside the food service establishment when protected from insects and rodents.

(2) Containers, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. Drain plugs, where required, shall be in place at all times, except during cleaning.

(3) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(4) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food-preparation areas. In new establishments, suitable facilities, including hot water and detergent, shall be provided and used for washing containers.

(5) The garbage and refuse on the premises shall be stored in a place inaccessible to insects and rodents. Outside storage of plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(6) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent- proof, and shall be large enough to store the garbage and refuse containers that accumulate.

(7) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

(8) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(9) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to applicable **administrative** regulations of the Cabinet for Natural Resources and Environmental Protection. Areas around incineration facilities shall be kept clean and orderly.

(10) Nonsewage liquid waste shall be disposed of in a manner that will not create a public health nuisance.

Section 25. Insect and Rodent Control. (1) Effective measures intended to eliminate the presence of rodents and flies, roaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(2) Openings to the outside shall be effectively protected against the entrance of rodents and shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 26. Construction and Maintenance of Physical Facilities. (1) The floors of all food preparation, food storage, and utensil-washing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, and toilet rooms and vestibules shall be constructed of smooth, durable materials such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair.

(2) Carpeting, if used, shall be properly installed, easily cleanable and maintained in good repair. Carpeting is prohibited in toilet rooms, food preparation areas, and in warewashing areas where it would be exposed to large amounts of grease and water.

(3) Sawdust, wood shavings, peanut hulls, or similar material on the floors in food processing areas is prohibited.

(4) Properly installed floor drains shall be provided in floors that are water flushed for cleaning or that receive discharge of water or other fluid waste from equipment. Such floors shall be constructed of sealed concrete, terrazzo, ceramic tile, or similar material graded to drain all parts of the floor.

(5) The floor of each walk-in refrigerator shall be graded to drain all parts of the floor to the outside through a waste pipe, doorway, or other opening, or equipped with a floor drain.

(6) Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, materials, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be

used as storage racks.

(7) In all new establishments utilizing concrete, terrazzo, ceramic tile or similar material, and where water flush cleaning methods are used, junctures of walls with floors shall be coved and sealed. In all other cases, the junctures between the walls and floors shall not present an open seam of more than one 1/32 of an inch.

(8) Utility service lines and pipes shall not be unnecessarily exposed on floors in food preparation and warewashing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(9) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(10) The walls, including nonsupporting partitions, wall coverings, and ceilings of all food preparation and warewashing areas and of toilet rooms shall be smooth, nonabsorbent, and easily cleanable. The use of rough or unfinished building materials such as brick, concrete blocks, wooden beams, or shingles is prohibited in those locations except by special plan approval by the cabinet.

(11) Studs, joists, and rafters shall not be exposed in walk-in refrigerators, food preparation areas, warewashing areas and in toilet rooms except by special plan approval by the cabinet.

(12) Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in food preparation and warewashing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(13) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(14) Covering material such as sheet metal, linoleum, vinyl, and similar materials shall be easily cleanable and nonabsorbent and shall be attached and sealed to the wall and ceiling surfaces so as to leave no open spaces or cracks.

(15) Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface.

Section 27. Cleaning Physical Facilities. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with push brooms. All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. In new establishments, or establishments that are extensively altered, readily accessible service sinks or curbed cleaning facilities shall be provided.

Section 28. Lighting. (1) At least thirty (30) foot-candles of natural or artificial light shall be provided to all working surfaces and to all other surfaces and equipment in food preparation, warewashing, and hand washing areas, and in toilet rooms. At least twenty (20) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all walk-in refrigerators, food storage areas and dining and entry areas, except that this requirement applies to dining areas only during cleaning operations.

(2) Shielding to protect against broken glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service and display facilities and facilities where utensils and equipment are cleaned and stored. Shatter proof bulbs may be approved by the cabinet without further shielding. Heat lamps shall be protected by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

Section 29. Ventilation. (1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, smoke and fumes. Ventilation systems shall be installed and operated according to applicable state laws and **administrative** regulations and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

(2) Rooms, including toilet room areas, and equipment, from which aerosols, obnoxious odors, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(3) Intake air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects and other contaminating materials.

Section 30. Dressing Areas and Lockers. (1) If employees routinely change clothes within the establishment, areas shall be designated for that purpose. Those areas shall not be located in areas used for food preparation, storage, or service or for warewashing or storage, except that a storage room containing only completely packaged food may be so designated.

(2) Enough lockers or other suitable facilities shall be provided and used for the storage of employees' clothing and other belongings. If dressing areas are designated, the lockers or other facilities shall be located within those areas.

Section 31. Poisonous or Toxic Materials. (1) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition or required for sanitization of equipment or utensils shall be present in retail food establishments.

(2) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled pursuant to the requirements of applicable law.

(3) Insecticides and rodenticides shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose.

(4) Working containers used for storing cleaners and sanitizers taken from bulk supplies shall be identified with the common name of the material.

(5) Poisonous or toxic materials stored or displayed for retail sale shall be separated by spacing or partitioning from, and not stored above, food, single service articles or single use articles intended for use with food.

(6) Detergents, sanitizers, related cleaning or drying agents, caustics, acids, polishes, lubricants and other chemicals shall not be stored above or intermingled with food equipment, utensils, single service articles, single use articles intended for use with food, except that: this requirement does not prohibit the convenient location and availability of cleaning and sanitizing agents at warewashing facilities.

(7) Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, or in a way that constitutes a hazard to employees or other persons.

(8) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons nor in a way other than in full compliance with the manufacturer's labeling. All pesticides and other materials whose label has a "warning" statement or displays the "skull and crossbones" and any other hazardous product that may be designated by the cabinet shall be handled and bagged separately at check-out counters.

(9) Personal medications shall not be stored in food storage, preparation, or service areas.

(10) First aid supplies shall be stored in a way that prevents them from contaminating food and food contact surfaces.

Section 32. Premises. (1) Retail food establishments and all parts of the property used in connection with operation of the establishment shall be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of the establishment shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be drained and shall be kept clean.

(3) Only articles necessary to the operation and maintenance of the establishment shall be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and warewashing areas and the presence in those areas of persons not authorized to be there by the permit holder or person in charge is prohibited.

(5) No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. A solid self-closing door shall separate food service operations from any living or sleeping area.

(6) No laundry operation shall be conducted, except that linens, uniforms and aprons used in the establishment may be laundered on the premises separate from food preparation and service areas.

(7) Clean cloths and napkins shall be stored in a clean place and protected from contamination until used. Nonabsorbent containers or washable laundry bags shall be provided and damp or soiled linens and cloths shall be kept in them until removed for laundering.

(8) Maintenance and cleaning materials and equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linen storage.

(9) Live animals, including birds and turtles, shall be excluded from all food service establishments and from areas adjacent to serving areas that are under the control of the permit holder. The exclusion does not apply to edible crustacea, shellfish, or fish, nor to fish in aquariums. Escorted police patrol dogs or guide dogs accompanying blind or other persons with physical limitations shall be permitted in dining areas.

Section 33. Mobile Food Units or Pushcarts. (1) Mobile units or pushcarts shall comply with the requirements of this **administrative** regulation, except as otherwise provided in this subsection and in subsection (2) of this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the establishment as a mobile or pushcart operation, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this **administrative** regulation relating to physical facilities, except those requirements of subsections (4) and (5) of this section and Sections 34 and 35 of this **administrative** regulation.

(2) A mobile unit or pushcart that serves only food that was prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this **administrative** regulation or beverages that are not potentially hazardous and are dispensed from protected equipment need not comply with requirements of this **administrative** regulation pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary; however, frankfurters may be prepared and served from these units or pushcarts.

(3) Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

(4) A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitization, and hand-washing, pursuant to the requirements of this **administrative** regulation. The water inlet shall be located in such a position that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed according to the State Plumbing Code.

(5) If liquid waste results from operation of a mobile food unit it shall be stored in permanently installed retention tanks that are at least 100 percent larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

Section 34. Commissary. (1) Mobile food units or pushcarts shall operate from a commissary or other fixed food service establishment that is constructed and operated in compliance with this **administrative** regulation; mobile food units equipped with a potable water supply system under pressure, liquid waste system retention tanks, sinks, lavatories, etc., shall not be required to operate from a commissary or other fixed food service establishment.

(2) Mobile retail food stores that sell only prepackaged, commercially prepared, sealed, and protected ready-to-eat foods, shall not be required to operate from a fixed retail food establishment.

Section 35. Mobile Food Unit or Pushcart Servicing Area and Operations. (1) Potable water servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.

(2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. The flushing and draining area for liquid wastes shall be separate from the area used for loading and unloading of food and related supplies. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection and the cabinet; if a public sewerage system becomes available, connection shall be made thereto and the establishment sewerage system shall be disconnected.

Section 36. Temporary Food Service Establishment. (1) A temporary food service establishment shall comply with the requirements of this **administrative** regulation, except as otherwise provided in this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this **administrative** regulation, except those requirements of subsections (2) to (10) of this section.

(2) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, which require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited. This prohibition does not apply, however, to any potentially hazardous food that is obtained in individual servings, is stored at a temperature of forty-five (45) degrees Fahrenheit or below, or at a temperature of 140 degrees Fahrenheit or above, and is served directly in the unopened container in which it was packaged.

(3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this **administrative** regulation. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use food grade plastic or wet- strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used, and when used, it shall be dispensed in a way that protects it from contamination.

(4) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Enough potable water shall be available in the establishment for cleaning and sanitizing utensils and equipment and for hand-washing. Enough hot water for these purposes shall be provided.

(6) The storage of packaged food in contact with water or undrained ice is prohibited, except that cans or bottles of nonpotentially hazardous beverages may be so stored when the water contains at least fifty (50) parts per million of available chlorine and is changed often enough to keep both the water and containers clean.

(7) Liquid waste shall be disposed of in such a manner as not to create a public health hazard or nuisance.

(8) A facility shall be provided for employee hand-washing. Where water under pressure is unavailable, such facility shall consist of a pan, warm water, hand cleanser, and individual paper towels.

(9) Floors shall be made of concrete, tight wood, asphalt, or other similar cleanable material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or duckboards.

(10) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Screening material used for walls shall be at least sixteen (16) mesh to the inch. Counter service openings shall not be larger than is necessary for the particular operation conducted. When flies are prevalent, counter-service openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Doors and windows, if any, shall be kept closed, except when food is being served.

Section 37. Plan Review of Future Construction. When a retail establishment is hereafter constructed or extensively remodeled, or plumbing relocated, or additional plumbing added, or when an existing structure is converted for use as a retail establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, size, location and type

of facilities and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 38. Procedure When Infection is Suspected. When the cabinet has reasonable cause to suspect possibility of disease transmission from any food service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The cabinet may require any or all of the following measures:

(1) The immediate exclusion of the employee from all food service establishments;

(2) The immediate closing of the food service establishment concerned until, in the opinion of the cabinet, no further danger of disease outbreak exists;

(3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;

(4) Adequate medical and laboratory examinations of the employee, of other employees, and of the body discharges of such employees.

Section 39. Food Caterers Must Display Permit Number. Each catering kitchen or similar food service establishment shall have posted in letters at least three (3) inches high the establishment's permit number clearly visible on vehicle(s) used in transporting foods. A copy of the establishment's permit to operate shall also be carried in each vehicle at all times. The permit number shall be declared in all forms of advertisements or promotional materials used by food service catering establishments.

Section 40. [~~39.~~] Enforcement Provisions. (1) Whenever the cabinet has substantial reason to believe that an imminent public health hazard exists, or whenever the permit holder or an authorized agent thereof has interfered with the cabinet in the performance of its duties, after its agents have duly and officially identified themselves, or if an inspection of an establishment reveals a rating score of less than sixty (60), the permit shall be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing on form DFS-217. A hearing shall be granted as soon as practical, or in any event not to exceed seven (7) days.

(2) In all other instances of violation of the provisions of this **administrative** regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violations and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this **administrative** regulation, the cabinet may suspend the permit. The permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period. Where there is a combination food service and retail food store, permit suspension shall apply only to the operation in violation of requirements.

(3) Any person whose permit has been suspended may, at any time, make application on form DFS-215 for a reinspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the reinspection reveals that the conditions causing suspension of the permit have been corrected, the permit shall be reinstated.

(4) For serious or repeated violations of any of the requirements of this **administrative** regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Notices provided for under this **administrative** regulation shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(6) The hearings provided for in this **administrative** regulation shall be conducted by the cabinet at a time and place designated by it. Based upon the record of such hearing, the cabinet shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.

(7) At least once every six (6) months, the cabinet shall inspect each establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this **administrative** regulation. Retail food stores offering only prepackaged foods for sale shall be inspected at least once each twelve (12) months, with as many additional inspections and reinspections as necessary.

(8) Whenever an inspection is made of an establishment, the findings shall be recorded on inspection report form DFS-208, provided for that purpose, and shall constitute a written notice to the permit holder. The original of the inspection report shall be furnished to the permit holder or person in charge. The inspection report form shall summarize the requirements of this **administrative** regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100.

(9) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, pursuant to the following provisions:

(a) When the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(b) When the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet but in any event, not to exceed ten (10) days.

(d) When the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of such notice unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period.

(e) In the case of temporary food service establishments, all violations shall be corrected within a specified period of time not to exceed twenty-four (24) hours. If violations are not so corrected, the permit shall be immediately suspended. In such event the permit holder may request a hearing which shall be granted as soon as practical.

(f) The report of inspection shall state that failure to comply with any time limits for corrections may result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for hearing is filed within ten (10) days. If a request for hearing is received, a hearing shall be held at a time and place designated by the cabinet.

(g) Whenever a food service establishment is required under the provisions of this **administrative** regulation to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time, but in no event to exceed seven (7) days.

Section 41. [~~40.~~] Examination and Detention of Foods. The cabinet may examine and collect samples of foods as often as necessary for the enforcement of this **administrative** regulation. The cabinet shall, upon written notice to the permit holder or authorized agent specifying the reason therefor, place under quarantine any food which it has probable cause to believe is adulterated or misbranded within the meaning of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992.

Section 42. [41.] The provisions of this **administrative** regulation shall apply to both food service establishments and retail food stores, unless otherwise specified.

C. HERNANDEZ, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: February 5, 1992
FILED WITH LRC: February 28, 1992 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(As Amended)

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 45 CFR 233.90, 233.100, 250, **"Expansion of Definition of Specified Caretaker Relative", Transmittal No. ACF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance**
STATUTORY AUTHORITY: KRS 194.050, 205.200(2), (3)
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC). KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with 42 USC 602 and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, job opportunities and basic skills (JOBS) program participation, cooperation in child support enforcement activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.
(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.
(3) "Case manager" means the Department for Social Insurance (DSI) individual who:
(a) Determines ongoing AFDC or medical assistance (MA) or food stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;
(b) Aids the JOBS participant by brokering services for the participant;
(c) Identifies and resolves barriers to the extent possible; and
(d) Delivers JOBS related services to the participant.
(4) "Conciliation" is a process in which participation problems in the JOBS program can be resolved.
(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.
(6) "Target population" means that group composed of each individual who:
(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;
(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;
(c) Is a custodial parent under the age of twenty-four (24) who:
1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or
2. Had little or no work experience in the preceding year; or
(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.

Section 2. Residence and Citizenship. (1) Residence. A resident is anyone who:
(a) Is living in the state;
(b) Entered the state with a job commitment or seeking employment; and
(c) Is not receiving AFDC benefits from another state.
(2) Citizenship. AFDC shall be provided only to:
(a) Citizens;
(b) Aliens lawfully admitted for permanent residence; or
(c) Aliens otherwise permanently residing in the United States under color of law.

Section 3. Deprivation. (1) To be eligible for AFDC, a child shall be in need and shall be deprived of parental support of a natural or adoptive parent or care due to:
(a) Death;
(b) Continued absence from the home;
(c) Physical or mental incapacity; or
(d) Effective October 1, 1990, unemployment.
(2) A married child living with his spouse in the home of his parents is not deprived of parental support or care.
(3) A married child living in the home of his parents but divorced or legally separated from his spouse is deprived of parental support if he is dependent on the parent and a parent is:
(a) Dead;
(b) Incapacitated;
(c) Unemployed; or
(d) Continually absent from the home.
(4) Continued absence from the home.
(a) To be eligible for AFDC, a needy child shall be physically separated from the parent and:
1. The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and
2. The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.
(b) Absence may be voluntary or involuntary.
1. Voluntary absence includes:
a. Divorce;
b. Legal separation;
c. Marriage annulment;
d. Desertion of thirty (30) days or more;
e. Forced separation of seven (7) days or more; or
f. Birth out-of-wedlock.
2. Involuntary absence includes:
a. Commitment to a penal institution for thirty (30) days or more;
b. Long-term hospitalization;
c. Deportation; or
d. Single parent adoption.
(c) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.
(5) Incapacity.
(a) All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations and the criteria set forth in this subsection.
(b) Each determination shall be based on a full consideration and assessment of all medical, social, and economic factors involving a particular claimant.
(c) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in a parent's inability to support or care for the child.
1. Incapacity exists in each case when the following criteria are met:
a. It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:
(i) Present at the time of application; and
(ii) Which has continued or is expected to last for a period of at least thirty (30) calendar days. This may include a period in which the claimant is undergoing planned diagnostic studies or evaluation of rehabilitation potential; and
b. It is determined by nonmedical evaluation that such defect, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.
2. Factors to be considered in making the medical determination shall include:

a. The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and

b. Competent medical testimony relevant to:

(i) Whether a physical or mental defect, illness or impairment exists;

(ii) Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and

(iii) Whether the defect, illness or impairment is likely to last thirty (30) days. The thirty (30) days is not intended to be a "waiting period." Rather, expected duration is pertinent to causal relationship and substantiality.

3. Factors to be considered in making the nonmedical evaluation shall include:

a. The claimant's:

(i) Age;

(ii) Employment history;

(iii) Vocational training;

(iv) Educational background; and

(v) Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

b. The extent and accessibility of employment opportunities available in the claimant's area of residence.

4. In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of handicapped individuals shall be taken into account; and

a. Available printed materials that provide information regarding available employment opportunities shall be researched;

b. The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

c. The claimant shall be referred, if necessary, for further appraisal of his abilities.

5. A written report shall be made of the determination under this subsection.

6. Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

(6) Unemployment. The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.

(a) Principal wage earner (PWE). The PWE is the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application.

1. If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

2. If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (4)(b) of this section.

3. Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

4. PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(b) Unemployment. A parent shall be considered to be unemployed if:

1. Employed less than 100 hours in a calendar month; or

2. Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent was under the 100 hour standard in the prior two (2) months and is expected to be under the 100 hour standard in the following month.

(c) Prior labor market attachment (PLMA).

1. PLMA is met if the parent:

a. Earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of the application;

b. Within twelve (12) months prior to application, received unemployment compensation; or

c. Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

2. In determining whether or not criteria in subsection (4)(c)1a of this section is met, the following shall be taken into consideration:

a. Participation in CWEP or WIN prior to October 1, 1990, and in JOBS after October 1, 1990, shall be considered as earning an income in determining PLMA.

b. Full-time attendance, as defined by the school or institution, in educational activities may be substituted for two (2) of the six (6) calendar quarters.

c. Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(d) Restrictions. Unemployment shall not exist if the PWE:

1. Is on strike;

2. Is temporarily unemployed:

a. Due to weather conditions or lack of work;

b. If there is a job to return to; and

c. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

3. Is unavailable for full-time employment;

4. Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

5. Has not met the criteria of unemployment for at least thirty (30) days;

6. Has not applied for unemployment benefits, if potentially eligible;

7. Is not:

a. Registered for work under Section 8 of this regulation; or

b. Subject to JOBS, under Section 9 of this regulation; or

8. Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC- UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 is met.

Section 4. Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin and first cousin once removed.

(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great, [or] great-great or great-great-great; a stepfather, stepmother, stepbrother, stepsister.

(3) Any person listed above if parent has had paternity established through the administrative determination process. An administrative determination of paternity is limited to situations in which the following types of evidence are present:

(a) A birth certificate listing the alleged parent; or

(b) Legal documents such as:

1. Hospital records;

2. Juvenile court records;

3. Wills; and

4. Other court records which clearly indicate the relationship of the alleged parent or relative; or

(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

1. School records;

2. Bible records;

3. Immigration records;

4. Naturalization records;

5. Church documents, such as baptismal certificates;

6. Passport;

7. Military records;

8. U.S. Census records; or

9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(e) Rebuttal of paternity.

1. Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent or caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct

information on the actual alleged parent.

2. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.

(4) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

(5) Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.

(6) If the parent continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:

(a) Medical care;
(b) Attendance at boarding school;
(c) College or vocational school;
(d) Emergency foster care; or
(e) Short visits with friends or relatives.

Section 5. Age and School Attendance. (1) A child may be eligible for AFDC from birth to age eighteen (18).

(2) A child may be eligible to age nineteen (19) if:

(a) A full-time student in a secondary school; or

(b) The equivalent level of vocational or technical training; and

(c) Expected to complete the program prior to or during the month of their 19th birthday.

(3) Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC.

(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;
(b) Illness;
(c) Convalescence; or
(d) Family emergency.

Section 6. One Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).

(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 7. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.

(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 8. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE shall register for work with the DES if:

(a) He resides in a non-JOBS county; or

(b) He resides in a JOBS county and is exempt from participation as specified in Section 9(1)(e) of this regulation.

(2) Failure of the PWE to register for work shall result in removal of the needs of the sanctioned individual and the second parent, unless the second parent has volunteered or is participating in JOBS.

Section 9. Job Opportunities and Basic Skills (JOBS) Training Program. (1) Exemptions. Effective October 1, 1990, all AFDC recipients are required to participate in the JOBS program if the program is available in the county of residence unless the recipient:

(a) Is a child who:

1. Is under age sixteen (16); or

2. Attends, full time, an elementary secondary, vocational or technical school (unless he was enrolled in school through the JOBS program);

(b) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;

(c) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS program. This may include a period of recuperation after child birth if prescribed by a woman's physician;

(d) Is sixty (60) years old or older;

(e) Resides in a county which offers the JOBS program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(f) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(g) Is working at least thirty (30) hours per week;

(h) Is pregnant and the child is expected to be born within the following six (6) month period;

(i) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in subsection (5)(c) of this section;

(j) Is a full-time VISTA volunteer.

(k) Is the parent or other relative personally providing care for a child under six (6) years of age unless the state IV-agency assures that child care will be guaranteed.

(2) Volunteers. All persons in active JOBS counties who are exempt as specified in subsection (1) of this section may volunteer to participate in the JOBS program.

(a) The DSI shall give first priority for JOBS services to volunteers within the target population to be served.

(b) A volunteer who is exempt, as specified in subsection (1) of this section and who stops participating without good cause, shall lose priority status for JOBS services if he volunteers at a later time.

(c) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in subsection (10) of this section.

(3) Components. All JOBS counties shall offer the following services and activities:

(a) Education is provided:

1. Below the postsecondary level:

a. High school or equivalent;

b. Basic or remedial education; and

c. English as a second language; or

2. At the postsecondary level if:

a. The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

b. The participant has or is capable of achieving the basic literacy skills required by the occupation; and

c. Jobs are available in the specific occupation for which education and training is needed.

(b) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(c) Job readiness activities that help prepare participants for work by familiarizing them with workplace expectations, attitudes and appropriate behavior.

(d) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for participants.

(4) Optional components. All JOBS counties shall offer job search, which provides group and individual assistance and training with job-seeking activities, and at least one (1) of the following components:

(a) On-the-job training in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job;

(b) Community work experience program which provides unpaid work experience and training to assist participants to move promptly into regular public or private employment.

(c) Work supplementation in which JOBS funds are used to develop and subsidize jobs for AFDC recipients. A participant's AFDC grant shall be reduced and that portion paid to the employer instead of to the participant to subsidize the individual's wages.

(5) JOBS participation requirements.

(a) Assessment. When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager. The case manager shall make an assessment of the

individual's employability. The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers. The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant;

4. Any other relevant factors.

(b) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

1. An employment goal for the participant;

2. Services to be provided by the agency (including child care);

3. JOBS activities to be undertaken to achieve the employment goal;

4. Other needs of the family.

(c) Special participation requirements for education.

1. An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

a. The parent is not otherwise exempt;

b. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

2. For purposes of this requirement, the exemption contained at subsection (1)(i) of this section shall not qualify the participant for exemption from JOBS educational activities.

3. The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

a. The parent fails to make good progress in successfully completing educational activities; or

b. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.

(d) Participation for parents with children under age six (6). Participants with children under age six (6) who are not required to participate in education (as specified in subsection (5)(c) of this section) shall not be required to participate in the JOBS program for more than twenty (20) hours per week.

(6) Self-initiated JOBS activities. Self-initiated JOBS activities refer to approved activities of individuals who of their own accord began education or training activities. These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training. Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan. Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity. The participant shall be attending:

(a) At least half time, as defined by the institution;

(b) A JTPA-funded program, if in training;

(c) A public source or private institution that is licensed by the Kentucky Board for Proprietary Education or recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(d) Other education or training which would otherwise be an approved JOBS activity, for example:

1. GED;

2. Literacy;

3. Other approved education attended less than half time.

(7) Good and satisfactory progress.

(a) Each participant in an education or training component shall meet good and satisfactory progress requirements. Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution. Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

1. Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at the end of seventy-five (75) hours or the 12th month of instruction, whichever comes first.

2. High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

3. Technical. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

4. Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, never to exceed a twelve (12) month period.

5. College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

6. DES components. Good and satisfactory progress shall be measured on a monthly basis.

(8) Conciliation. A conciliatory meeting shall be conducted in the following instances:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in subsection (10) of this section).

(d) The DSI, the DES, or both agencies jointly shall conduct the conciliatory meetings. During the meetings, the agency shall determine if additional services are needed to assist with JOBS participation. Participation shall be monitored for thirty (30) days following the initial meeting to ensure that the dispute has been resolved. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(e) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

(9) Good cause.

(a) Good cause for noncompliance in the JOBS program or refusal to accept employment shall be found if:

1. The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;

2. Necessary child care is not available;

3. Employment would result in a net loss of cash income;

4. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;

5. Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

6. Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

7. Illness of another household member requiring the presence of the participant;

8. The participant is temporarily incarcerated;

9. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs occurs;

10. Work demands or conditions render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The presence of a risk to the individual's health or safety;

11. Wage rates are decreased subsequent to acceptance of employment;

12. The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

13. A household emergency occurs, such as:

a. Death of a member of the immediate family;

b. Entry into a spouse abuse center;

c. Natural disasters;

d. Court appearance;

e. Victim of crime; or

f. Flooded basement; or

14. The participant receives temporary military assignment.

(b) The duration of good cause criteria may vary according to individual circumstances.

(10) Sanctions.

(a) When an AFDC recipient fails to comply with the requirements of the JOBS program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

1. Fails without good cause to participate in the required interview, assessment, and employability plan activities;

2. Fails without good cause to participate in the program;

3. Refuses without good cause to accept employment; or

4. Terminates employment or reduces earnings without good cause.

(b) Persons who have failed to comply without good cause shall be sanctioned, as follows:

1. The participant is excluded from JOBS activities and services;

a. For the first failure to comply, until the failure to comply ceases;

b. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and

c. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.

2. In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin. In a case based on unemployment, the agency shall not take into account the needs of the sanctioned individual and the second parent, unless the second parent is participating in JOBS.

3. A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.

Section 10. Cooperation in Child Support Enforcement Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.

(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child(ren) adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him for adoption and discussion has not gone on for more than three (3) months and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made.

Section 11. Potential Entitlement for other Programs. (1) All applicants or recipients shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) Failure to apply results in ineligibility for AFDC.

Section 12. Furnishing of Social Security Account Numbers. All applicants or recipients shall furnish social security account numbers.

Section 13. Assignment of Rights to Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 14. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 15. Material Incorporated by Reference. (1) Forms necessary for participation in the JOBS program are being incorporated effective October 1, 1990.

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

MIKE ROBINSON, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: March 2, 1992
FILED WITH LRC: March 11, 1992 at 11 a.m.

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

905 KAR 6:060. CSBG audit specifications.

RELATES TO: KRS 273.410 to 273.453 [468]
STATUTORY AUTHORITY: KRS 194.050, 273.448
NECESSITY AND FUNCTION: 42 USC 9901-9912 [PL 97-35, Subtitle B] - "Community Services Block Grant Program" (CSBG), enacted August 13, 1981, authorizes block grants to states to ameliorate the causes of poverty in communities within the state. KRS 194.050 authorizes the Cabinet for Human Resources to adopt **administrative** [such rules and] regulations [as are] necessary to implement programs mandated by federal law, or to qualify for 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 establish the criteria and methodology that shall [will] be used to measure compliance with applicable state and federal laws and regulations. [This regulation includes the substance of 905 KAR 6:030; therefore, 905 KAR 6:030 is no longer necessary.]

Section 1. CSBG Audit Guide. (1) The Cabinet for Human Resources hereby adopts, by reference, the Community Services Block Grant Audit Specifications, dated August 6, 1991 [July 1, 1988], as the document to be used in auditing state agency expenditures of federal CSBG funds and [as well as] CSBG funds expended through contract services. The guide makes provision for the performance of an audit in three (3) basic areas of interest:

(a) Compliance audit;
(b) Federal financial participation audit; and
(c) Statement of compliance and fraud, abuse or illegal acts.

(2) The CSBG audit specifications shall be available for **public inspection and copying** [review] during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: February 3, 1992
FILED WITH LRC: February 28, 1992 at 3 p.m.

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

905 KAR 6:070. Program state plan for CSBG.

RELATES TO: KRS 273.410 to 273.453, 42 USC 9901-9912
STATUTORY AUTHORITY: KRS 194.050, 273.453, 42 USC 9901-9912
NECESSITY AND FUNCTION: 42 USC 9901-9912 - "Community Services Block Grant Program," enacted August 13, 1981, authorizes grants to states to ameliorate the causes of poverty in communities within the state. KRS 194.050 authorizes the Cabinet for Human Resources to adopt **administrative** regulations necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this **administrative** regulation is to implement the Kentucky Community Services Block Grant Program which shall comply with applicable state and federal laws and regulations. [This regulation includes the substance of 905 KAR 6:050; therefore, 905 KAR 6:050 is no longer necessary.]

Section 1. (1) The "Community Services Block Grant Program Plan for the Commonwealth of Kentucky" for fiscal year 1992 [~~1991~~], is hereby adopted by reference as the plan for utilization of CSBG funds. The plan includes:

(a) Assurances as required by federal law and regulations;

(b) Provisions for use of funds by community action agencies;

(c) Programmatic considerations such as geographic areas to be served;

(d) Client eligibility, and complaint procedures; and

(e) Fiscal considerations such as administration, required match, and allocation formula.

(2) The "Community Services Block Grant Program Plan" may be reviewed**, inspected or copied** during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: February 3, 1992
FILED WITH LRC: February 28, 1992 at 3 p.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

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

401 KAR 30:010. Definitions for 401 KAR Chapters 30 to 49.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99, [~~224.033, 224.830 through 224.888, 224.994,~~] 40 CFR Part 260.11, 261 Appendix X, 268 Appendix I

STATUTORY AUTHORITY: KRS 224.10-100, [~~Chapter 13A, 224.033,~~] 40 CFR Part 260.11, 261 Appendix X, 268 Appendix I

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] and the waste management provisions of KRS Chapter 224 require the Natural Resources and Environmental Protection Cabinet to adopt [~~rules and~~] regulations for the management of solid, special, and hazardous wastes. This chapter establishes the general administrative procedures that [~~which~~] are applicable to 401 KAR Chapters 31 to [~~through~~] 49. This regulation defines essential terms used in connection with the waste management regulations.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise clearly indicated by their context, terms in KRS Chapter 224 and in 401 KAR Chapters 30 to 49 [~~the waste management regulations~~] shall have the meanings given in this regulation.

(1) "Aboveground tank" see either "hazardous waste management unit-hazardous waste tanks-aboveground tank" or "solid waste site or facility-tank-aboveground tank."

(2) "Accumulated speculatively" see Section 1 of 401 KAR 31:010.

(3) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a [~~hazardous waste site or facility or a solid~~] waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(4) "Active life" of a facility means the period from the initial receipt of [~~hazardous waste or solid~~] waste at a waste site or [~~the~~] facility until the cabinet receives certification of final closure.

(5) "Active portion" means any area of a facility where treatment, storage or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(6) "Administrative application" see "application - administrative application."

(7) "Administrator" means the administrator of the United States Environmental Protection Agency, or his designee.

(8) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners must be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(9) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(10) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(11) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(12) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(13) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48 [~~the waste management regulations for a permit type which are not on a form~~]. The term includes the following:

(a) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(b) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to [~~through~~] 401 KAR 38:210. [~~Specifically, Part B consists of submitting all of the information required in 401 KAR 38:090 through 401 KAR 38:210; there are no official forms for the submission.~~]

(c) [~~"Notice of intent to apply for a solid waste permit" or~~] "Notice of intent" means the standard forms for applying for:

1. A solid waste site or facility permit as required by 401 KAR 47:160, 401 KAR 47:170 and 401 KAR 48:200; or

2. A special waste landfarming or composting permit as required by 401 KAR 45:030 and 401 KAR 45:100.

(d) "Administrative application" means the standard forms and format used for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:180.

(e) "Special waste application" means the forms approved by the cabinet for applying for a formal permit as specified in 401 KAR 45:030.

(f) [~~(e)~~] "Technical application" means the standard format for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:190.

(14) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(15) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, [~~and/~~]or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(16) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

(17) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(18) "Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(19) "Board" shall have the meaning specified in KRS 224.46-810 [~~means the Kentucky regional integrated waste treatment and disposal facility siting board (KRS 224.2201)~~].

(20) "Boiler" see "hazardous waste site or facility-boiler."

(21) "By-product" see Section 1 of 401 KAR 31:010.

(22) "Cabinet" shall have the meaning specified in KRS 224.01-010. [~~means the Natural Resources and Environmental Protection Cabinet (KRS 224.005).~~]

(23) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous or saline soils.

(24) "Cell" means a portion of any [~~a landfill or a sanitary~~] landfill which is isolated, usually by means of an approved barrier.

(25) "Certificate" shall have the meaning specified in KRS 224.46-810. [~~means a certificate of environmental safety and public necessity (KRS 224.2201).~~]

(26) "Certification" means a statement of professional opinion based upon knowledge and belief.

(27) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(28) "Closed unit" means any solid waste unit that no longer receives [solid] waste as of May 8, 1990 [the effective date of this regulation] and has received all required final layers of cover material, or a special waste unit that no longer receives waste and has received all required final layers of cover material.

(29) "Closure" shall have the meaning specified in KRS 224.01-010. [means the time at which a waste treatment, storage or disposal facility permanently ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for postclosure monitoring and maintenance or to make it suitable for other uses (KRS 224.005).]

(30) "Closure care" or "postclosure" means the routine care, maintenance, monitoring and any required corrective action of a special waste or solid waste disposal site or facility following certification of closure until the applicable requirements [in Section 13 of 401 KAR 48:090, Section 15 of 401 KAR 48:070 and Section 3 of 401 KAR 48:170] are met.

(31) "Coal mining solid waste" means solid waste as defined by KRS 224.01-010 [224.005] which is generated at, and is incidental to, a coal exploration operation or surface mining and reclamation operation regulated under KRS Chapter 350, and shall not include wastes generated by households, communities, cities, counties, or any person or business other than those regulated under KRS Chapter 350.

(32) "Coal mining waste" means earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, that are generated during and incidental to the mining and extraction of coal and to the washing and crushing of coal. The term does not include used oil, paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

(b) Overburden which includes all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining; and

(c) Coal mining by-products which include any material that is not one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(33) "Commercial solid waste" shall have the meaning specified in KRS 224.01-010. [means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household and industrial wastes.]

(34) "Component" see "hazardous waste management unit-hazardous waste tanks-component" or "solid waste site or facility-tank-component."

(35) "Compost" shall have the meaning specified in KRS 224.01-101.

(36) "Composting" shall have the meaning specified in KRS 224.01-010.

(37) [(35)] "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(38) [(36)] "Constituent" or "hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(39) [(37)] "Construction/demolition debris landfill" see "solid waste site or facility-construction/ demolition debris landfill."

(40) [(38)] "Construction/demolition waste" see "solid waste site or facility."

(41) [(39)] "Construction materials" means nonhazardous nonsoluble material, including but not limited to steel, concrete, brick, asphalt roofing material, or lumber from a construction or demolition project. Mixture of construction and demolition debris with any amount of other types of waste may cause it to be classified as other than construction materials.

(42) [(40)] "Contained landfill" see "solid waste site or facility - contained landfill."

(43) [(41)] "Container" means any portable enclosure in which a material is stored, transported, treated, disposed, or otherwise handled.

(44) [(42)] "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or [, Section 8.]

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060[, Section 8].

(c) For substances that do not have an established maximum contamination level, a significant increase above established background levels.

(45) [(43)] "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(46) [(44)] "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(47) [(45)] "Corrosion expert" means a person who by reason of his knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks documented by credentials submitted to the cabinet. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(48) [(46)] "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(49) [(47)] "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38, a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124, or that is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020.

(50) [(48)] "Destruction or adverse modification" means an [a direct or indirect] alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(51) [(49)] "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(52) [(50)] "Director" means the director of the cabinet's division of waste management.

[(51) "Discharge" means but is not limited to spilling, leaking, pumping, pouring, emitting, emptying, or dumping (KRS 224.877(a)).]

(53) [(52)] "Disease vector" means all insects, birds or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(54) [(53)] "Disposal" shall have the meaning specified in KRS 224.01-010. [means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment, be emitted into the air or be discharged into any water, including groundwaters (KRS 224.005).]

(55) [(54)] "Disposal facility" see "hazardous waste site or facility

- disposal facility" or "solid waste site or facility-disposal facility".

(56) [~~(55)~~] "Elementary neutralization unit" see "hazardous waste site or facility - elementary neutralization unit."

(57) [~~(56)~~] "Emergency permit" see "permit-emergency/ permit".

(58) [~~(57)~~] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(59) [~~(58)~~] "Environmental emergency" shall have the meaning specified in KRS 224.01-400. [~~includes any release or threatened release of materials into the environment in such quantities or concentrations as to cause or threaten to cause an imminent and substantial danger to human health or the environment; the term includes, but is not limited to, discharges of oil and hazardous substances prohibited by section 311(b)(3) of the federal Clean Water Act (P.L. 92-500), as amended (KRS 224.877(1)(d).~~]

(60) [~~(59)~~] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(61) [~~(60)~~] "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; and treatment, storage, or disposal facility.

(62) [~~(61)~~] "EPA region" means the states and territories found in any one (1) of the [~~following~~] ten (10) regions recognized by the U.S. EPA. [:

~~Region I - Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.~~

~~Region II - New York, New Jersey, Puerto Rico, and the Virgin Islands.~~

~~Region III - Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.~~

~~Region IV - Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.~~

~~Region V - Minnesota, Wisconsin, Illinois, Michigan, Indiana, and Ohio.~~

~~Region VI - New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.~~

~~Region VII - Nebraska, Kansas, Missouri, and Iowa.~~

~~Region VIII - Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.~~

~~Region IX - California, Nevada, Arizona, Hawaii, Guam, American Samoa, and Commonwealth of Northern Mariana Islands.~~

~~Region X - Washington, Oregon, Idaho, and Alaska.~~]

(63) [~~(62)~~] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(64) [~~(63)~~] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(65) [~~(64)~~] "Existing hazardous waste site or facility" or "existing facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(66) [~~(65)~~] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(67) [~~(66)~~] "Existing tank system" see "hazardous waste management unit - hazardous waste tank-existing tank system."

(68) [~~(67)~~] "Explosive gas" means methane (CH_4) [~~in 401 KAR 30:030, Section 1(1)~~].

(69) [~~(68)~~] "Existing unit" means any solid waste disposal unit that was [~~is~~] receiving solid waste as of May 8, 1990, and any special waste site or facility that was receiving waste as of the effective date of this amendment, [~~regulation~~] and has not received the final layers of cover material.

(70) [~~(69)~~] "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one (1) or more landfills, surface impoundments, or combination of them).

(71) [~~(70)~~] "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(72) [~~(71)~~] "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(73) [~~(72)~~] "Federal, state and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state or local hazardous waste control statutes, regulations or ordinances.

(74) [~~(73)~~] "Final closure":

(a) Of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030;

(b) Of a solid waste site or facility means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030 and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170 or 401 KAR 48:200; and [~~and the environmental performance standards in 401 KAR 48:050.~~]

(c) Of a special waste site or facility means the approved closure of a special waste site or facility in accordance with the applicable requirements of 401 KAR 45:100, 401 KAR 45:110, and 401 KAR 30:031.

(75) [~~(74)~~] "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: [~~401 KAR 47:040.~~]

(a) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(b) "100-year flood" means a flood that has a one (1) percent chance of being equalled or exceeded in any given year.

(c) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(76) [~~(75)~~] "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(77) [~~(76)~~] "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(78) [~~(77)~~] "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(79) [~~(78)~~] "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in 401 KAR Chapter 31 or whose act first causes a hazardous waste to become subject to regulation.

(a) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(b) "Limited quantity generator" means a generator who generates less than 100 kilograms of hazardous waste in a calendar month.

(c) If a limited quantity generator generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram, all quantities of that acutely hazardous waste are subject to regulation under 401 KAR Chapters 32 to [~~through~~] 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510 to 224.46-580, and 224.50-130 to 224.50-413. [~~224.855 and 224.864 through 224.877.~~]

(80) [~~(79)~~] "Groundwater" means water which is in the zone of perennial saturation. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the

perennially unsaturated zone, and from water held in chemical or electrostatic bondage. It is synonymous with the term "phreatic water."

(81) [~~(80)~~] "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(82) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(83) [~~(81)~~] "Hazardous substance" shall have the meaning specified in KRS 224.01-400. [~~means any substance or combination of substances including wastes of a solid, liquid, gaseous or semisolid form which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment. Such substances may include but are not limited to those which are, according to criteria established by the cabinet, toxic, corrosive, ignitable, irritants, strong sensitizers or explosive (KRS 224.877(b)).~~]

(84) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

[~~(82) "Hazardous waste constituent" means a constituent that caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.~~]

(85) [~~(83)~~] "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(86) [~~(84)~~] "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include:

[~~(a) Hazardous waste tanks.~~]

(a) [~~1.~~] "Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(b) [~~2.~~] "Component" means either the tank or ancillary equipment of a tank system.

(c) [~~3.~~] "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation [~~has~~] commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

1. [~~a.~~] A continuous on-site physical construction or installation program has begun; or

2. [~~b.~~] The owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(d) [~~4.~~] "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(e) [~~5.~~] "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation [~~has~~] commenced after July 14, 1986; [~~except,~~] however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986. [~~(See also "existing tank system".)~~]

(f) [~~6.~~] "On-ground tank" means a device meeting the definition of "tank" in this section [~~and~~] that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(g) [~~7.~~] "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(h) [~~8.~~] "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(i) [~~9.~~] "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(87) [~~(85)~~] "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method.

(a) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

1.a. The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

b. The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) must be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

c. While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

d. The unit must export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

2. The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(b) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(c) "Elementary neutralization unit" means a device which:

1. [~~tank, container, transport vehicle, or vessel which~~] is used for neutralizing wastes that [~~which~~] are hazardous [~~wastes~~] only because they exhibit the corrosivity characteristic defined in 401 KAR 31:030, Section 3, or they are listed in 401 KAR 31:040 only for this reason; and [~~Chapter 31 or are wastes listed in 401 KAR Chapter 31 only for this reason.~~]

2. Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(d) "Incinerator" means any enclosed device using controlled flame combustion that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace.

(e) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:

1. Cement kilns.
2. Lime kilns.
3. Aggregate kilns.
4. Phosphate kilns.
5. Coke ovens.
6. Blast furnaces.
7. Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces).
8. Titanium dioxide chloride process oxidation reactors.
9. Methane reforming furnaces.
10. Pulping liquor recovery furnaces.
11. Combustion devices used in the recovery of sulfur values from spent sulfuric acid.
12. [~~Such~~] Other devices as the cabinet may, after notice and

comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(f) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(g) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, or a cave.

(h) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These [~~; such~~] facilities are disposal facilities if the waste will remain after closure.

(i) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, [~~and~~] that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under 401 KAR 38:060, Section 6.

(j) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(k) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(l) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(m) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that [~~which~~] is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support and which does not meet the definition of any other unit.

(n) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(o) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(p) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(q) "Wastewater treatment unit" means a device that:

1. Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the CWA; and

2. Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

3. Meets the definition of tank or tank system in this regulation. [~~tank which is part of a wastewater treatment facility which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, stores, treats, generates or accumulates wastewater treatment sludge, either of which is a hazardous waste.~~]

(88) [~~(86)~~] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(89) [~~(87)~~] "Household solid waste" shall have the meaning specified in KRS 224.01-010. [~~means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds.~~]

(90) [~~(88)~~] "Inactive portion" means that portion of a hazardous waste site or facility which was [~~is~~] not operated after November 19, 1980.

(91) [~~(89)~~] "Incinerator" see "hazardous waste site or facility - incinerator" or "solid waste site or facility-incinerator".

(92) [~~(90)~~] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(93) [~~(91)~~] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(94) [~~(92)~~] "Industrial furnace" see "hazardous waste site or facility - industrial furnace."

(95) [~~(93)~~] "Industrial solid waste" shall have the meaning specified in KRS 224.01-010. [~~means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under 401 KAR Chapters 32 through 39. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.~~]

(96) [~~(94)~~] "Inert landfill" see "solid waste site or facility - inert landfill."

(97) [~~(95)~~] "Infectious waste" means those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

(98) [~~(96)~~] "Inground tank" see "hazardous waste management unit - hazardous waste tank - inground tanks" or "solid waste site or facility-tanks-inground tanks".

(99) [~~(97)~~] "Injection well" see "hazardous waste site or facility-injection well", [~~or~~] "solid waste site or facility-injection well", or "special waste site or facility-injection well".

(100) [~~(98)~~] "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(101) [~~(99)~~] "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(102) [~~(100)~~] "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(103) [~~(101)~~] "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until [~~such time as~~] final administrative disposition of the [~~such~~] application is made.

(104) [~~(102)~~] "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(105) [~~(103)~~] "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(106) [~~(104)~~] "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(107) "Key personnel" shall have the meaning specified in KRS 224.01-010.

[~~(105)] "KPDES" means Kentucky Pollutant Discharge Elimination System.~~]

(108) [~~(106)~~] "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(109) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(110) [~~(107)~~] "Landfarming facility" see "solid waste site or facility-landfarming facility" or "special waste site or facility-landfarming facility".

(111) [~~(108)~~] "Landfill" see "hazardous waste site or facility - landfill."

(112) [~~(109)~~] "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(113) [~~(110)~~] "Land treatment facility" see "hazardous waste site or facility-land treatment facility."

(114) [~~(111)~~] "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing special waste or solid waste landfill unit.

(115) [~~(112)~~] "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(116) [~~(113)~~] "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(117) [~~(114)~~] "Limited quantity generator" see "generator-limited quantity generator."

(118) [~~(115)~~] "Liner" means a continuous layer of natural or manmade material, beneath or on the sides of a [~~hazardous or solid~~] waste site or facility, including but not limited to a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(119) [~~(116)~~] "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(120) [~~(117)~~] "Management facility" see "solid waste site or facility-management facility".

(121) [~~(118)~~] "Major modification" means:

(a) For hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040); and

(b) For solid waste sites and facilities, a change meeting the criteria in Section 3 of 401 KAR 47:130.

(122) [~~(119)~~] "Manifest" shall have the meaning specified in KRS 224.01-010. [~~means the shipping document form contained in Appendix A of 401 KAR 32:100, and if necessary the form contained in Appendix B of 401 KAR 32:100, originated and signed by the generator in accordance with the instructions included in 401 KAR 32:100.~~]

(123) [~~(120)~~] "Manifest document number" means the U.S. EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(124) "Materials recovery facility" shall have the meaning specified in KRS 224.01-010.

(125) [~~(121)~~] "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(126) [~~(122)~~] "Miscellaneous unit" see "hazardous waste site or facility - miscellaneous unit" or "solid waste site or facility - miscellaneous unit".

(127) [~~(123)~~] "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(128) [~~(124)~~] "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(129) [~~(125)~~] "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(130) [~~(126)~~] "Municipal solid waste" shall have the meaning specified in KRS 224.01-010. [~~means household solid waste and commercial solid waste.~~]

(131) "Municipal solid waste reduction" shall have the meaning specified in KRS 224.01-010.

[~~(127) "NPDES" means National Pollutant Discharge Elimination System (KRS 224.005(29)).~~]

(132) [~~(128)~~] "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(133) [~~(129)~~] "New tank system" see "hazardous waste management unit-hazardous waste tank-new tank system".

(134) [~~(130)~~] "Notice of intent to apply for a solid waste permit" see "application - notice of intent to apply for a solid waste permit".

(135) [~~(131)~~] "Off-site" means properties noncontiguous to the generation site.

(136) [~~(132)~~] "Onground tanks" see "hazardous waste management unit - hazardous waste tanks - onground tanks" or "solid waste site or facility - tank - onground tanks".

(137) [~~(133)~~] "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

[~~(134)] "100 year flood" means a flood that has a one (1) percent or one (1) in 100 or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period, taking into consideration the present engineering aspect of the flood plain.~~]

(138) [~~(135)~~] "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(139) [~~(136)~~] "Open dump" shall have the meaning specified in KRS 224.01-010. [~~means any facility or site for the disposal of solid waste which does not meet the criteria for a sanitary landfill under regulations promulgated by the cabinet which shall be consistent with regulations promulgated under section 4004, Resource Conservation and Recovery Act of 1976, as amended (P.L. 94-580), and which is not a facility for disposal of hazardous waste (KRS 224.005).~~]

(140) [~~(137)~~] "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, and[~~/or~~] disposal of wastes.

(141) [~~(138)~~] "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(142) [~~(139)~~] "Owner" means any person who owns an on-site or

off-site waste facility, or any part of a facility.

(143) [~~(140)~~] "Part A of the application" or "Part A" see "application - Part A application".

(144) [~~(141)~~] "Part B of the application" or "Part B" see "application - Part B application".

(145) [~~(142)~~] "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(146) [~~(143)~~] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(147) [~~(144)~~] "Periodic application of cover material" means the application and compaction of soil or other suitable material over disposed waste at a solid waste site or facility at the end of each operating day or at such frequencies and in such a manner as to reduce the risks of fire and to impede disease vector's access to the waste.

(148) [~~(145)~~] "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management regulations. The term "permit" includes [~~also~~] "permit-by-rule," "registered permit-by-rule," "research, development, and demonstration permit", and "emergency permit." However, the term "permit" does not include "draft permit" or [~~a~~] "proposed permit."

(a) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, [~~or~~] to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(b) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. [~~that certain classes of sites or facilities are presumed to hold a permit so long as the operations of such sites or facilities do not present a threat of imminent hazard to public health or a substantial environmental impact, in violation of any of the environmental performance standards specified in 401 KAR 30:020 or 47:030 or the maximum groundwater contaminant levels specified in Section 5 of 401 KAR 34:060. Both hazardous and solid waste sites or facilities may be considered to hold a permit by rule.~~]

1. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

2. Examples of solid waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 47:150.

3. Examples of special waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 45:060.

(c) "Registered permit by rule" means that certain classes of solid waste sites or facilities as specified in 401 KAR 47:080 have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200 or that certain classes of special waste sites or facilities as specified in 401 KAR 45:020 have a permit as provided in 401 KAR 45:070.

(d) "Research, development and demonstration permit" means a special waste site or facility or solid waste treatment or disposal facility using innovative and experimental technology as specified in sections of 401 KAR 47:150.

(149) [~~(146)~~] "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, [~~and/~~]or dispose of waste.

(150) [~~(147)~~] "Person" shall have the meaning specified in KRS 224.01-010. [~~means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body (KRS 224.005).~~]

(151) [~~(148)~~] "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management regulations.

(152) [~~(149)~~] "Pile" or "waste pile" see "hazardous waste site or facility-pile" or "solid waste site or facility-pile" or "special waste site or facility-pile".

(153) [~~(150)~~] "Point of compliance" means for special waste sites or facilities or solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet [~~in accordance with 401 KAR 48:300~~].

(154) [~~(151)~~] "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(155) [~~(152)~~] "Postclosure care" means the manner in which a facility must be maintained when it no longer accepts [~~hazardous~~] waste for disposal.

(156) [~~(153)~~] "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010. [~~means the routine care, maintenance and monitoring of a solid waste disposal facility or hazardous waste treatment, storage, or disposal facility following closure of the facility.~~]

[~~(154) "Preventive measures" means the installation or testing of equipment or devices, designated way of performing a specified operation or the preparation of an emergency response plan (KRS 224.877(c)).~~]

(157) [~~(155)~~] "Processing facility" see "solid waste site or facility - processing facility".

(158) [~~(156)~~] "Proposed permit" or "draft permit" means a document prepared by the cabinet [~~under Section 3 of 401 KAR 47:140~~] indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit. [~~A notice of intent to terminate a permit and a notice of intent to deny a permit as discussed in Section 2 of 401 KAR 47:140 are types of proposed permits. A denial of a request for modification, revocation or termination as discussed in Section 2 of 401 KAR 47:140 is not a proposed permit.~~]

(159) [~~(157)~~] "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010. [~~means any device or system used in the treatment (including recycling and recovery) of any municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a political subdivision of the Commonwealth (KRS 224.005).~~]

(160) [~~(158)~~] "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as odors, gases, or other offensive conditions.

(161) [~~(159)~~] "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(162) [~~(160)~~] "Reclaimed" see Section 1 of 401 KAR 31:010.

(163) [~~(161)~~] "Recovered material" shall have the meaning specified in KRS 224.01-010. [~~means waste material and by-products which have been recovered or diverted from waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (KRS 224.005).~~]

(164) "Recovered material processing facility" shall have the meaning specified in KRS 224.01-010.

(165) [~~(162)~~] "Recycling" shall have the meaning specified in KRS 224.01-010. [~~means any treatment process for the reclamation of material or energy from waste (KRS 224.005). See also Section 1 of 401 KAR 31:010.~~]

(166) [~~(163)~~] "Recycling center" see "solid waste site or facility - recycling center".

(167) [(164)] "Recycling facility" see "solid waste site or facility - recycling facility".

(168) "Refuge-derived fuel" shall have the meaning specified in KRS 224.01-010.

(169) [~~(165)~~] "Regional Administrator" means the regional administrator for the EPA region in which the facility is located, or his designee.

(170) [~~(166)~~] "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010. [~~means a model hazardous waste facility receiving wastes from a region larger than the county boundaries in which it is located, from more than one (1) person, and utilizing multiple treatment and disposal technologies, one (1) of which must be a secure landfill, and one (1) of which must be a high technology~~

~~incinerator, and designed so as to promote resource recovery and energy generation from hazardous waste and the use of state of the art techniques for rendering waste nonhazardous, and the disposal of waste in a manner that minimizes the risk to public health and long term environmental impacts (KRS 224.2201(4)).~~]

(171) [~~(167)~~] "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(172) [~~(168)~~] "Research, development and demonstration permit" see "permit - research, development and demonstration permit".

(173) [~~(169)~~] "Residential landfill" see "solid waste site or facility - residential landfill."

(174) [~~(170)~~] "Residual landfill" see "solid waste site or facility - residual landfill."

(175) [~~(171)~~] "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(176) [~~(172)~~] "Resource recovery" means the recovery of material or energy from waste.

(177) [~~(173)~~] "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(178) [~~(174)~~] "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(179) [~~(175)~~] "Salvaging" means the controlled removal of waste materials for utilization in a manner approved by the cabinet.

(180) [~~(176)~~] "Sanitary landfill" see "solid waste site or facility - sanitary landfill".

(181) [~~(177)~~] "Saturated zone" or "zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

(182) [~~(178)~~] "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

(183) [~~(179)~~] "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49. [~~the waste management regulations.~~]

(184) [~~(180)~~] "Scrap metal" see Section 1 of 401 KAR 31:010.

(185) [~~(181)~~] "Secretary" shall have the meaning specified in KRS 224.01-010. [~~means the secretary of the Natural Resources and Environmental Protection Cabinet (KRS 224.005).~~]

(186) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(187) [~~(182)~~] "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(188) [~~(183)~~] "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other [~~such~~] waste having similar characteristics and effects.

(189) [~~(184)~~] "Small quantity generator" see "generator - small quantity generator".

(190) [~~(185)~~] "Solid waste management" shall have the meaning specified in KRS 224.01-010. [~~means the administration of solid waste activities: collection, source separation, storage, transportation, transfer, processing, treatment and disposal, which shall be in accordance with a departmentally approved county or multicounty solid waste management plan (KRS 224.005).~~]

(191) [~~(186)~~] "Solid waste management area" or "area" shall have the meaning specified in KRS 224.01-010. [~~means any county or group of counties so designated by the cabinet by approval of the local solid waste management plan (KRS 224.005).~~]

(192) [~~(187)~~] "Solid waste management facility" shall have the meaning specified in KRS 224.01-010. [~~means any resource recovery system or component thereof, any system, program or facility for resource conservation, and any facility for collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise (KRS 224.005).~~]

(193) [~~(188)~~] "Solid waste site or facility" means any place at which solid waste is managed, processed or disposed by landfilling, incineration, landfarming or any other method. The term includes the following:

(a) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of solid waste resulting from the construction, remodeling, repair and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm related cleanup. [~~Such waste includes, but is not limited to, bricks, shredded or segmented tires, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, tree stumps, limbs, saw dust, leaves, yard waste, paper, paper products, metals, furniture, insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and components containing no liquids or hazardous metals that are incidental to any of the above and other inert waste as approved by the cabinet. Asbestos containing materials may be accepted only if the permit application includes procedures approved by the cabinet to handle these materials. Construction/demolition debris landfills shall not be for disposal of garbage, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, PCB containing waste, hazardous material spill residues, limited quantity generator hazardous waste, or any waste regulated by 401 KAR Chapters 31 and 32, whole tires, liquids, drums, fuel tanks, or other nonpermitted wastes.~~] The technical requirements for construction/demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050 and 401 KAR 48:060.

(b) "Collection box" shall have the meaning specified in KRS 224.01-010.

(c) [~~(b)~~] "Contained landfill" means a solid waste site or facility that [~~which~~] accepts for disposal solid waste [~~including residential, commercial, institutional, industrial, municipal solid waste, shredded tires, household hazardous waste, limited quantity generator hazardous waste and spill cleanup residues that are not hazardous waste~~]. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050 and 401 KAR 48:070 to [~~through~~] 401 KAR 48:090.

(d) [~~(c)~~] "Convenience center" shall have the meaning specified in KRS 224.01-010. [~~means a facility that is manned during operating hours for the collection and subsequent transportation of municipal solid wastes from individual households.~~]

(e) [~~(d)~~] "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(f) [~~(e)~~] "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

(g) [~~(f)~~] "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(h) [~~(g)~~] "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(i) [~~(h)~~] "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(j) [~~(i)~~] "Miscellaneous unit" means a solid waste management unit where waste is disposed of and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under Section 3 of 401 KAR 47:150.

(k) "Municipal solid waste disposal facility" shall have the meaning specified in KRS 224.01-010.

(l) [~~(j)~~] "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or management.

(m) [~~(k)~~] "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous; safer to transport, store, or

dispose of; or amenable for recovery, amenable for handling or reduced in volume.

(n) [(t)] "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

(o) [(m)] "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

(p) [(n)] "Residual landfill" means a facility for the disposal of specific solid waste(s), including special waste, which is located, designed, constructed, operated, maintained and closed in conformance with 401 KAR 30:031 and [the "Environmental performance standards" in] 401 KAR 47:030 and which receives a case-by-case design review by the cabinet.

(q) [(o)] "Sanitary landfill" means a facility for the disposal of solid waste that [which] complies with 401 KAR 30:031 and [the "environmental performance standards" specified in] 401 KAR 47:030.

(r) [(p)] "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(s) [(q)] "Tank" means a stationary device designed to contain an accumulation of leachate or liquid solid waste which is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

1. "Aboveground tank" means a device meeting the definition of "tank" in this subsection and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

2. "Component" means either the tank or ancillary equipment of a tank system.

3. "Inground tank" means a device meeting the definition of "tank" in this subsection whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

4. "Onground tank" means a device meeting the definition of "tank" in this subsection and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

5. "Tank system" means a solid waste tank and its associated piping, ancillary equipment and containment system.

6. "Underground tank" means a device meeting the definition of "tank" in this subsection whose entire surface area is totally below the surface of and covered by the ground.

7. "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of managing or processing solid waste without posing a threat of release of waste to the environment.

(t) [(r)] "Transfer facility" shall have the meaning specified in KRS 224.01-010. [means any transportation related facility including loading docks, parking areas, and other similar areas where shipments of solid waste are held or transferred during the normal course of transportation.]

(u) [(s)] "Unit" or "solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(v) [(t)] "Wastewater treatment unit" means a tank which is part of a wastewater treatment facility which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes, generates or accumulates wastewater treatment sludge, either of which is a solid waste.

(w) [(u)]1. "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, wood chips, and tree trimmings[, etc.]) may be considered by the cabinet for disposal at inert landfills.

2. "Residential landfill" means a facility for the proper disposal of solid waste including residential waste, commercial waste, institutional waste, and those sludges, industrial or special waste with specific approval from the cabinet.

(194) [(189)] "Solid waste unit" see "solid waste site or facility - unit".

(195) [(190)] "Special wastes" shall have the meaning specified in KRS 224.50-760. [means those wastes of high volume and low hazard which include, but are not limited to, mining waste, utility wastes (fly ash, bottom ash, scrubber sludge), sludge from water treatment facilities and waste water treatment facilities, cement kiln dust, gas and oil drilling muds and oil production brines (KRS 224.868(1)(a)).]

(196) "Special waste site or facility" means any place at which special waste is managed, processed, or disposed by landfilling, landfarming, composting, or any other method. The term includes:

(a) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(b) "Landfarming facility" means a facility for land application of sludges or other special waste for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(c) "Landfill" means a special waste site or facility for the disposal of specific wastes that is located, designated, constructed, operated, maintained, and closed in conformance with 401 KAR Chapter 45 and 401 KAR 30:031, and receives a case-by-case design review by the cabinet.

(d) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing special waste that is used for processing or management.

(e) "Surface impoundment" means a facility or part of a facility that is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(197) [(191)] "Spent material" see Section 1 of 401 KAR 31:010.

(198) [(192)] "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(199) [(193)] "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(200) "Storage" shall have the meaning specified in KRS 224.01-010.

(201) [(194)] "Storage facility" see "hazardous waste site or facility - storage facility."

(202) [(195)] "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(203) [(196)] "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect hazardous waste for transport to hazardous waste management units.

(204) [(197)] "Surface impoundment" see "hazardous waste site or facility - surface impoundment", [and] "solid waste site or facility - surface impoundment", or "special waste site or facility-surface impoundment".

(205) [(198)] "Tank" see "hazardous waste site or facility - tank" or "solid waste site or facility - tank".

(206) [(199)] "Tank system" see "hazardous waste management unit - hazardous waste tank - tank system" or "solid waste sites or facility - tank system".

(207) [(200)] "Technical application" see "application - technical application".

(208) [(201)] "Termination" shall have the meaning specified in KRS 224.01-010. [means the final actions taken by the cabinet as to

~~a solid waste or hazardous waste treatment, storage or disposal site or facility when formal responsibilities for postclosure monitoring and maintenance cease (KRS 224.005).~~]

(209) [~~(202)~~] "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(210) [~~(203)~~] "Thermal treatment facility" see "hazardous waste site or facility - thermal treatment facility."

(211) [~~(204)~~] "Totally enclosed treatment facility" see "hazardous waste site or facility - totally enclosed treatment facility."

(212) [~~(205)~~] "Transfer facility" shall have the meaning specified in KRS 224.01-010. [~~means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous, or solid or special waste are held during the normal course of transportation.~~]

(213) [~~(206)~~] "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body [~~(trailer, railroad freight car, etc.)~~] is a separate transport vehicle.

(214) [~~(207)~~] "Transportation" shall have the meaning specified in KRS 224.01-010. [~~means any off site movement of waste by any mode, and any loading, unloading, or storage incidental thereto (KRS 224.005).~~]

(215) [~~(208)~~] "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(216) [~~(209)~~] "Treatment" shall have the meaning specified in KRS 224.01-010. [~~means any method, technique, or process including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous (KRS 224.005).~~]

(217) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(a) Whether the waste is amenable to the treatment process;

(b) What pretreatment, if any, is required;

(c) The optimal process conditions needed to achieve the desired treatment;

(d) The efficiency of a treatment process for a specific waste or wastes; or

(e) The characteristics and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(218) [~~(210)~~] "Treatment facility" see "hazardous waste site or facility - treatment facility."

(219) [~~(211)~~] "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(220) [~~(212)~~] "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or manmade depression and the covering with soil or other suitable material at the end of each operating day such that the waste does not migrate to the surface.

(221) [~~(213)~~] "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(222) [~~(214)~~] "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "hazardous waste site or facility, injection well.")

(223) [~~(215)~~] "Underground tank" see "hazardous waste management unit - hazardous waste tank - underground tank" or "solid waste site or facility-tank-underground tank".

(224) "Universal collection" shall have the meaning specified in KRS 224.01-010.

(225) [~~(216)~~] "Unsaturated zone" or "zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(226) [~~(217)~~] "Unfit for use" see "hazardous waste management unit - hazardous waste tank - unfit for use" or "solid waste site or facility - tank - unfit for use".

(227) [~~(218)~~] "Unit" see "solid waste site" or "facility - unit".

(228) [~~(219)~~] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(229) [~~(220)~~] "Used or reused" see Section 1 of 401 KAR 31:010.

(230) [~~(221)~~] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(231) [~~(222)~~] "Vessel" means any [~~includes every description of~~] watercraft used or capable of being used as a means of transportation on the water.

(232) [~~(223)~~] "Washout" means the carrying away of waste by waters as a result of flooding [~~of the base flood~~].

(233) [~~(224)~~] "Waste" shall have the meaning specified in KRS 224.01-010. [~~means:~~

~~(a) "Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining wastes, coal mining by products, refuse and overburden) and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) (KRS 224.005);~~

~~(b) "Hazardous waste" means any discarded material or material intended to be discarded or substance or combination of such substances intended to be discarded, in any form which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; nothing in this chapter shall be construed to apply to any activity or substance which is subject to the federal Atomic Energy Act of 1954, as amended (68 Stat. 923) except as provided in KRS 224.867.~~]

(234) [~~(225)~~] "Waste boundary" means:

(a) The outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity; or

(b) An alternative boundary for a solid or special waste disposal facility which may be used in lieu of paragraph (a) when the cabinet finds that such a change would not result in the contamination of groundwater which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all the factors identified in the following subparagraphs of this paragraph that are relevant:

1. The hydrogeological characteristics of the facility and surrounding land including any natural attenuation and dilution characteristics of the aquifer;

2. The volume and physical and chemical characteristics of the leachate;

3. The quantity, quality, and direction of flow of groundwater underlying the facility;

4. The proximity and withdrawal rates of groundwater users;

5. The availability of alternative drinking water supplies;

6. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater; and

7. Public health, safety, and welfare effects.

(235) "Waste site or facility" shall have the meaning specified in KRS 224.01-010.

[~~(226) "Waste facility" means a hazardous waste site or facility or a solid waste site or facility.~~]

(236) [~~(227)~~] "Waste management district" shall have the meaning specified in KRS 224.01-010. [~~means any county or group of counties electing to form under the provisions of KRS 109.071 and operate in conformance with the provisions of KRS Chapter 109 and with Section 4006, Resource Conservation and Recovery Act of 1976, as amended (P.L. 94-580) (KRS 224.005).~~]

(237) [~~(228)~~] "Waste pile" see either "hazardous waste site or facility-pile" [~~or~~] "solid waste site or facility-pile", or "special waste site or facility-pile".

(238) [~~(229)~~] "Wastewater treatment unit" see "hazardous waste site or facility - wastewater treatment unit" or "solid waste site or facility - wastewater treatment unit".

(239) [~~(230)~~] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(240) [~~(231)~~] "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010. [~~means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction (KRS 224.005).~~]

(241) [~~(232)~~] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(242) [~~(233)~~] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, where:

(a) "Hydric soils" means soils that, in their undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing either in water, or in a substrate that is at least periodically deficient of oxygen during a growing season as a result of excessive water content.

(243) "Water pollution" shall have the meaning specified in KRS 224.01-010.

(244) [~~(234)~~] "Zone of engineering control" means an area under the control of the owner/operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(245) [~~(235)~~] "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive waste.

Section 2. Acronyms and Abbreviations. The acronyms and abbreviations used in 401 KAR Chapters 30 through 49 can be found in Table 1.

Table 1. Acronyms and Abbreviations

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm^2	Centimeter squared
CO	Carbon monoxide
CO_2	Carbon dioxide
CWA	Clean Water Act, as amended
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
EP Toxicity	Extraction procedure toxicity
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended [~~(P.L. 94-580)~~]
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
USEPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service

Section 3. References. The test methods cited in Title 401, Chapters 30 to [~~through~~] 49, are those listed in 40 CFR [~~Part~~] 260.11 as of June 21, 1990 [~~October 27, 1987~~], Appendix X of 40 CFR 261 as of January 14, 1985, [~~and~~] Appendix I of 40 CFR 268 as of June 4, 1987, and 401 KAR Chapters 5 to 8.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 30:031. Environmental performance standards.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99, 16 USC 1531 et. seq., 33 USC 1251 et. seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the treatment, storage, recycling and disposal of wastes. KRS 224.40-305 requires that persons engaging in the treatment, storage, recycling and disposal of waste obtain a permit. This chapter establishes the general administrative procedures that are applicable to 401 KAR Chapters 31 to 49. This regulation sets forth the minimum environmental performance standards with which all waste sites or facilities shall comply.

Section 1. Purpose, Scope and Applicability. The standards in this regulation are for use under the waste management provisions of KRS Chapter 224 in determining which waste sites or facilities pose a reasonable probability of adverse effects on human health or the

environment. Waste sites or facilities failing to satisfy the requirements of this regulation shall be considered open dumps, which are prohibited by KRS 224.40-100. No owner or operator shall cause, suffer, or allow a waste site or facility or any unit of a waste site or facility to violate any provision of this regulation.

Section 2. Floodplains. No waste site or facility shall restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or be placed in a manner likely to result in washout of waste, so as to pose a hazard to human health, wildlife, or land or water resources.

Section 3. Endangered Species. No waste site or facility shall:

(1) Cause or contribute to the taking of any endangered or threatened species or candidate species listed pursuant to 16 U. S. C. 1531 et seq. (the Endangered Species Act of 1983 as amended); or

(2) Result in the destruction or adverse modification of the critical habitat of an endangered or threatened species or candidate species listed pursuant to 16 USC 1531 et seq. (the Endangered Species Act of 1983 as amended).

Section 4. Surface Waters. No waste site or facility shall:

(1) Cause a discharge of pollutants into waters of the Commonwealth, including wetlands, that violate any requirements of KRS Chapter 224, or **the surface water standards of** 401 KAR Chapter 5 or 8; or

(2) Cause a discharge of dredged material or fill material to waters of the Commonwealth that is in violation of the requirements under 33 USC 1251 et. seq. (Section 404 of the Clean Water Act of 1977 as amended).

Section 5. Groundwater. [~~(1)~~] No waste site or facility shall contaminate an underground drinking water source beyond the point of compliance in excess of the maximum contaminant levels [~~contained in 401 KAR 8:200 to 401 KAR 8:600 or the following~~]:

(1) Chemical	Maximum Contaminant Level (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon Tetrachloride	0.005
Chromium (Hexavalent)	0.05
2,4-Dichlorophenoxy Acetic Acid	0.1
1,4-Dichlorobenzene	0.075
1,1 [~~1,2~~]-Dichloroethylene	0.007
1,2-Dichloroethane	**0.005**
Endrin	0.0002
Fluoride	4.0
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10.0
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloroethane	**0.200** [~~0.02~~]
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy Acetic Acid	0.01
Vinyl Chloride	0.002

(2) Maximum microbiological contaminant levels. The maximum contaminant level for coliform bacteria from any one (1) well shall be:

(a) Using the membrane filter technique:

1. One (1) coliform colony per 100 milliliters if one (1) sample is taken; or

2. One (1) coliform colony per 100 milliliters in more than one (1) sample of all the samples analyzed in one (1) month; or

(b) Using the five (5) tube most probable number procedure (the fermentation tube method) in accordance with the analytical procedures approved by the cabinet, and using a standard sample, each portion being one-fifth (1/5) of the sample:

1. If the standard portion is ten (10) milliliters, coliform in any five (5) consecutive samples from a well shall not be present in three (3) or more of the twenty-five (25) portions; or

2. If the standard portion is 100 milliliters, coliform in any five (5) consecutive samples from a well shall not be present in five (5) samples or in more than fifteen (15) of the twenty-five (25) portions.

(3) Maximum turbidity limit. The maximum contaminant level for turbidity is one (1) turbidity unit (TU), as determined by a monthly average of daily samples, and no more than five (5) turbidity units, based on an average for two (2) consecutive days.

(4) Maximum trihalomethane limits. The maximum contaminant level for total trihalomethanes (TTHMs) is one-tenth (0.10) milligrams per liter (mg/l).

(a) How computed. The results of all analyses performed each quarter shall be averaged and reported in a format supplied by the cabinet. All samples collected shall be used in computing the average, unless the analytical results are invalidated by the cabinet.

(b) Running average. Compliance will be determined on a running annual average of the four (4) most recent quarterly samples.

(5) [~~(2)~~] Analytical methods approved by the cabinet shall be used in evaluating compliance with subsection (1) of this section.

Section 6. Application to Land Use for the Production of Food Chain Crops. No waste site or facility shall exist or occur that applies waste within three (3) feet of the surface of land used for the production of food chain crops unless in compliance with all the requirements of subsection (1) or (2) of this section:

(1)(a) The pH of the waste and soil mixture is six and five-tenths (6.5) or greater at the time of each waste application, except for waste containing cadmium at concentrations of two (2) mg/kg (dry weight) or less;

(b) The annual application of cadmium from waste does not exceed 0.44 pounds per acre on land used for production of tobacco or food chain crops. The annual cadmium application rate does not exceed 0.44 pounds per acre; and

(c) The maximum cumulative application of cadmium from the waste does not exceed the levels in Table 1 of this paragraph.

Table 1
Maximum cumulative application

Soil Cation Exchange Capacity (meq/100g)	Background Soil pH	Pounds/per/Acre
<5	≥6.5	4.46
5-15	≥6.5	8.92
>15	≥6.5	17.84
>15	<6.5*	4.46

*For soils with a background pH of less than six and five-tenths (6.5), the maximum cumulative cadmium applications rate for soils with a background pH equal to or greater than six and five-tenths (6.5) may be used if the pH of the sludge-soil mixture is adjusted to and maintained at six and five-tenths (6.5) or greater whenever food chain crops are grown.

(2) If animal feed is the only food chain crop produced, there is no limit to the cadmium application rate, as long as the pH of sludge and soil mixture is six and five-tenths (6.5) or greater at the time of sludge application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown. A plan shall also be developed that demonstrates how the animal feed shall be distributed to preclude human ingestion, and the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses. Future property owners shall also be notified by a stipulation in the land record or property deed that states that the property received sludge at high cadmium application rates and that food chain crops, except for animal feed, shall not be grown due to possible health hazards.

Section 7. Polychlorinated Biphenyls. No waste site or facility shall exist or occur that places waste containing concentrations of polychlorinated biphenyls (PCBs) equal to or greater than one (1) mg/kg (dry weight) on the land. However, residual landfills may dispose of PCBs in accordance with their permit, and special waste and contained landfills may dispose of wastes containing PCBs equal to forty-nine (49) mg/kg (dry weight) or less.

Section 8. Disease. (1) Disease vectors. No waste site or facility shall exist or occur unless the on-site population of disease vectors is prevented or controlled through the periodic application of cover material or other techniques as appropriate to protect human health and the environment.

(2) Sewage sludge and septic tank pumpings. No waste site or facility shall exist or occur that applies sewage sludge or septic tank pumpings within three (3) feet of the surface of the land unless a process to significantly reduce pathogens has been utilized.

Section 9. Air. (1) No waste site or facility shall engage in open burning of wastes. This requirement does not apply to infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land-clearing debris, diseased trees, debris from emergency cleanup operations, or ordinance.

(2) No waste site or facility shall violate applicable air pollution requirements contained in KRS Chapter 224 or 401 KAR Chapters 50 to 63.

Section 10. Safety. (1) Explosive gases. No waste site or facility shall allow the concentration of explosive gases generated by the facility to exceed:

(a) Twenty-five (25) percent of the lower explosive limit for the gases in facility structures, excluding gas control or recovery system components; and

(b) The lower explosive limit for the gases at the facility property boundary.

(2) Fires. No waste site or facility shall pose a hazard to the safety of persons or property from fires. This may be accomplished through compliance with Section 9 of this regulation and this section, through the periodic application of cover material or other techniques as appropriate.

(3) Access. No waste site or facility shall allow uncontrolled public access, unauthorized vehicular traffic, or illegal dumping of wastes. This requirement to ensure protection of human health and the environment may be met by using artificial barriers, natural barriers, or other methods as appropriate.

Section 11. Public Nuisance. No waste site or facility shall result in a public nuisance because of blowing litter, debris, or other waste or material.

Section 12. Wetlands. No new or expanded waste site or facility shall be located in wetlands.

Section 13. Karst. No waste site or facility shall allow **contamination of** [~~pollution to enter~~] karst terrain.

Section 14. Compliance. No waste site or facility shall violate any requirement of KRS Chapter 224 or regulations promulgated pursuant thereto.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 45:010. Definitions.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50
STATUTORY AUTHORITY: KRS 224.01-010, 224.10-100, 224.40-100, 224.40-305, 224.40-605, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation defines essential terms used in connection with the management of special wastes.

Section 1. Definitions. Unless otherwise clearly indicated by their context, the terms in KRS Chapter 224 and this chapter shall have the meanings given in KRS 224.01-100 and this regulation.

(1) "Beneficial reuse" means the use or reuse of a special waste in a process or product in a manner that is consistent with the environmental performance standards of 401 KAR 30:031. Special waste used in a manner constituting disposal, or used to produce a product that is applied to the land, shall not meet the definition of beneficial reuse.

(2) "Certified operator" means a special waste site or facility operator who holds a valid certificate upon the successful completion of an approved training course and examination. The following are categories of certified operators:

(a) "Landfarming operator" means a certified operator who is the individual responsible for ensuring compliance with all permit conditions at a landfarming facility who is reasonably available to the site;

(b) "Landfill operator" means a certified operator who is the individual with primary responsibility for management and operation of a special waste landfill to assure compliance with all permit conditions and is reasonably available to the site during operations; and

(c) "Composting operator" means a certified operator who is the individual responsible for ensuring compliance with all permit conditions at a composting facility who is reasonably available to the site.

(3) "Closure" shall have the meaning specified in KRS 224.01-010.

(4) "Coal combustion by-products" means special waste including fly ash, bottom ash, and scrubber sludge residues produced by coal-fired electrical generating units. This waste does not include residues of refuse derived fuels such as municipal waste, tires, and solvents.

(5) "Composting" means the process by which biological decomposition of organic special waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material that can easily and safely be stored, handled, and used in an environmentally acceptable manner:

(a) "Composting" may include a process that creates an anaerobic zone within the composting material;

(b) "Composting" does not include simple exposure of special waste under uncontrolled conditions resulting in natural decay.

(6) "Construction permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to commence site preparation prior to the disposal or management of special waste.

(7) "Construction/operation permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to accept special waste for disposal or management. This permit is issued only after the construction of the site or facility has been certified as complete by the cabinet and the necessary financial assurance has been executed.

(8) "Formal permit" means a permit for special waste landfills, landfarming operations, and composting operations issued by the cabinet after review of the designated application form and completion by the applicant of the requirements of this chapter.

(9) "Horizontal expansion" means any increase in the capacity of a special waste landfill that expands the waste boundary of the landfill beyond the original waste boundaries contained in the approved permit application.

(10) "Interim operator" means a person who assumes the position of **a special waste site or facility** [~~landfarming~~] operator in the absence of a designated certified operator. An interim operator may be a person who has not completed training as specified in subsec-

tion (2) of this section.

(11) "Landfarming facility" means a facility for land application of sludges or other special waste by any method for purposes of disposal. It can be on any piece or pieces of land, subject to approval, and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(12) "Postclosure" means the routine care, maintenance, and monitoring of a special waste site or facility following closure of the facility.

(13) "Special waste" shall have the meaning specified in KRS 224.50-760.

Section 2. Acronyms and Abbreviations. The acronyms and abbreviations used in this chapter are listed in Table 1.

Table 1. Acronyms and Abbreviations

CFR - Code of Federal Regulations
EPA - Environmental Protection Agency
FDIC - Federal Deposit Insurance Corporation
FSLIC - Federal Savings and Loan Insurance Corporation
KAR - Kentucky Administrative Regulations
KPDES - Kentucky Pollutant and Discharge Elimination System
KRS - Kentucky Revised Statutes
NCUA - National Credit Union Administration
NPDES - National Pollutant and Discharge Elimination System
PCB - Polychlorinated biphenyl
POTW - Publically Owned Treatment Works
USC - United States Code
USDA - United States Department of Agriculture
USGS - United States Geological Survey

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 45:030. Obtaining a special waste site or facility permit.

RELATES TO: KRS 146.200 to 146.990, 224.01, 224.10, 224.40, 224.50, 224.70, 224.99, 16 USC 661 et seq., 1273 et seq., 1531 et seq., 50 CFR Part 402

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.10-210, 224.40-305, 224.40-330, 224.50-760, 16 USC 661 et seq., 1273 et seq., 1531 et seq., 50 CFR Part 402

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the operating standards applicable to all special waste sites or facilities. This regulation establishes the procedures for obtaining a permit for a special waste site or facility.

Section 1. The Objective and Requirements of the Application for a Special Waste Formal Permit. All applicants for a special waste formal permit shall submit an application, on the designated application form, that contains all of the information specified in this regulation. The applicant shall submit the application on a form approved by the cabinet and signed in accordance with Section 10 of this regulation. Engineering drawings, specifications and studies shall be certified by a professional engineer registered in Kentucky. The contents of the application shall be accurate and complete before the cabinet makes a preliminary determination to issue a special waste formal permit.

Section 2. Scope of the Permit Requirements. (1) Except as otherwise provided in this section, any person managing special waste shall maintain a special waste site or facility permit as specified in Section 2 of 401 KAR 45:020.

(2) Specific exclusions.

(a) The disposal of mining overburden, coal mining wastes, refuse, and coal mining by-products returned to the mine site of generation, including any nonhazardous waste generated directly as a result of the mining operation, shall not require a special waste site or facility permit. Owners or operators disposing of the materials in this subsection shall obtain and be regulated by the appropriate permit issued pursuant to KRS Chapter 350.

(b) Persons managing special waste during emergency situations such as:

1. A spill of a special waste;

2. An imminent and substantial threat of a spill of special waste; or

3. A spill of a material which, when spilled, becomes a special waste.

(3) Specific inclusions.

(a) Owners and operators of sites or facilities with permits under other programs for certain aspects of the facility operation shall also obtain the required special waste site or facility permit. (b) Any person who initiates or continues special waste containment or disposal activities after emergency situations are taken shall be subject to all applicable requirements of this chapter for those activities.

(4) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. A permit-by-rule for any unit for which a permit has not been issued or denied shall not be affected by the issuance or denial of a permit to any other unit at the facility.

Section 3. Considerations of State and Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable state and federal laws. These laws include but are not limited to:

(1) 16 USC 661 et seq. (the Fish and Wildlife Coordination Act of 1958, as amended);

(2) 16 USC 1273 et seq. (the National Wild and Scenic Rivers System);

(3) 16 USC 1531 et seq. (the Endangered Species Act of 1983, as amended) and 50 CFR Part 402;

(4) KRS 146.200 to 146.360 and 401 KAR Chapters 4 and 5 (the Wild Rivers System); and

(5) KRS 146.410 to 146.990 and KAR Title 400 (the Nature Preserves System).

Section 4. Limitations of a Permit. (1) A permit may be modified or revoked during its term for cause as set forth in 401 KAR 45:040 and in 401 KAR Chapter 40.

(2) The issuance of a permit shall not convey any property rights or any exclusive privilege.

(3) The issuance of a permit shall not authorize any injury to persons or property or invasion of other private property rights, or any infringement of state or local laws or regulations.

Section 5. Prohibition of Use of Unpermitted Facilities. No person shall deliver, or cause to be delivered, special waste to a site or facility unless the owner or operator has:

(1) Submitted a notice to the cabinet in accordance with Section 4(1) of 401 KAR 45:020 as an existing waste site or facility in operation on or before the effective date of this regulation;

(2) Qualified for a permit-by-rule in accordance with 401 KAR 45:060;

(3) Qualified for a registered permit-by-rule in accordance with 401 KAR 45:070 or 401 KAR 45:100;

(4) Obtained a solid waste facility permit providing for the disposal of special waste in accordance with 401 KAR Chapters 47 and 48; or

(5) Obtained a special waste formal permit in accordance with this chapter.

Section 6. Permit Required. (1) No person shall engage in the management, processing, or disposal of special waste at a waste site or facility without first obtaining a permit from the cabinet as specified in this chapter.

(2) No person shall engage in the management, processing, or disposal of special waste and solid waste without first obtaining a permit from the cabinet as specified in 401 KAR Chapters 47 and 48.

(3) No person shall engage in the management, processing, or disposal of special waste and hazardous waste without first obtaining a permit from the cabinet as specified in 401 KAR Chapters 31 to 39.

(4) An owner or operator shall maintain a valid permit during the active life of the special waste site or facility, including the closure and postclosure periods required under 401 KAR 45:100 and 401 KAR 45:110.

Section 7. New Special Waste Sites or Facilities. (1) No person shall begin physical construction of a new special waste site or facility without having received a special or solid waste permit.

(2) An applicant for a special waste formal permit shall submit to the cabinet an application that contains the information specified in Section 8 of this regulation.

(3) The site shall be designed in accordance with the applicable requirements of this chapter.

(4) If the cabinet determines during the review of the application that the proposed site cannot meet the requirements of this chapter, the cabinet shall deny the permit.

(5) The cabinet shall make a preliminary determination to issue or deny an application for a special waste formal permit within 180 calendar days from initial receipt of the application.

(6) If the application is incomplete, the cabinet shall notify the applicant in writing of the deficiencies. Failure to submit any required information noted by the cabinet within ninety (90) calendar days of receipt of the deficiencies may be grounds for denial of the application. Periods of deficiency correction shall not be counted against the review time frame specified in subsection (5) of this section.

Section 8. Application for a Special Waste Formal Permit. (1) Any person who is required to have a special waste site or facility permit under this chapter shall sign and submit a complete application to the cabinet. The application forms are:

(a) Persons applying for a special waste landfill permit shall use form DEP 7094A entitled "Application For A Special Waste Landfill Permit" (**May** [~~March~~] 1992). The requirements contained in the special waste landfill permit application are incorporated in this regulation by reference. The cabinet may require that additional information be included in the application to ensure that a draft permit conforms with the requirements of this chapter. The permit application form may be obtained from the Division of Waste Management, **14** [~~18~~] Reilly Road, Frankfort, KY 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(b) Persons applying for a special waste landfarming facility permit shall use form DEP 7021A entitled "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" (March **1992** [~~1991~~]), and form DEP 7021B entitled "Application for a Special Waste Landfarming Facility Permit" (**May** [~~March~~] 1992). The requirements contained in forms DEP 7021A and DEP 7021B are incorporated in this regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, **14** [~~18~~] Reilly Road, Frankfort, KY 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday; and

(c) Persons applying for a special waste composting facility permit shall use form DEP 7021A entitled "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" (March 1992), and form DEP 7094D entitled "Application for a Special Waste Composting Facility Permit" (**May** [~~March~~] 1992). The requirements contained in forms DEP 7021A and DEP 7094D are incorporated in this regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, **14** [~~18~~] Reilly Road, Frankfort, Ky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(2) Alternative application information may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer in accordance with 401 KAR 30:020 that the alternative information results in information equal to or better than that in this regulation to determine that the site and design comply with 401 KAR 30:031 and this chapter.

(3) Persons applying for a special waste formal permit shall submit to the cabinet, as part of the application, form DEP 7094J entitled "Past Performance Information" (March 1992). The requirements contained in form DEP 7094J are incorporated in this regulation by reference. The past performance information is collected in accordance with the requirements of KRS 224.40-330(1) and (3). The information form may be obtained from the Division of Waste Management, **14** [~~18~~] Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(4) The cabinet shall not begin the processing of a formal permit application until the applicant has fully complied with the application requirements for a permit pursuant to this regulation, 401 KAR 45:100 or 401 KAR 45:110, and 401 KAR 45:160.

(5) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing waste site or facility, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet shall notify the applicant in writing when the application is deemed complete after receiving any required additional information. The notification of completeness shall also contain any public notice required under Section 4 of 401 KAR 45:050.

(6) If an applicant fails or refuses to correct deficiencies in the application or submit additional information, the permit shall be denied and, if applicable, enforcement actions taken under the appropriate statutory regulatory provisions.

(7) If the cabinet determines that a site investigation or visit is necessary for any reason in conjunction with the processing of an application, the applicant **or an authorized representative of the applicant** shall accompany the cabinet representative on a site investigation or visit if requested by the cabinet.

(8) The cabinet may require such additional information as it deems necessary in order to make a final determination to issue a permit or deny the permit application.

Section 9. Formal Permit Issuance. (1) The cabinet shall make a preliminary determination to issue or deny the permit application after review of the complete application. In making this preliminary determination, the cabinet shall consider the requirements specified in this chapter and KRS Chapter 224.

(2) If the cabinet makes a preliminary decision to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application shall be subject to the public information process as specified in 401 KAR 45:050. If the cabinet's final decision reverses the preliminary decision to deny the permit application, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

(3) If the cabinet makes a preliminary determination to issue the permit, a draft construction permit shall be prepared containing the following information:

(a) The proposed design and specifications; and

(b) Any conditions in accordance with Section 2 of 401 KAR 45:140.

(4) The draft construction permit shall be based on the administrative record outlined in Section 3 of 401 KAR 45:050.

(5) All draft construction permits prepared by the cabinet under this section, including those applications for horizontal expansions under Section 1 of 401 KAR 45:040, shall be subject to the public information process as specified in 401 KAR 45:050.

(6) After the close of the public comment period, the cabinet shall issue a final permit decision to issue or deny the construction permit.

(7) A final permit decision shall become effective on the date of issuance of the construction permit by the cabinet.

(8) The cabinet shall document the disposition of significant comments received, and, within thirty (30) days of a final permit decision, make this documentation available to the public by supplying it to the repository established in the county in which the facility is proposed.

(9) The cabinet shall issue a construction permit if it finds that the applicant for the permit has met all the requirements for application and the requirements of this chapter and KRS Chapter 224.

(10) The applicant shall maintain a construction permit in full force and effect until the construction/operation permit is issued by the cabinet.

(11) A construction/operation permit shall be issued by the cabinet when:

(a) The applicant has notified the cabinet, in writing, that the liner system, if required, has been constructed; and

(b) A representative of the cabinet has inspected the site and verified in writing, within thirty (30) days of the inspection, that the site has been developed in accordance with plans approved by the cabinet;

(c) The required financial responsibility in 401 KAR 45:080 for closure has been established using any of the mechanisms required by 401 KAR 45:080 in an amount determined by an approved closure plan and cost estimate; and

(d) The applicant has submitted a certification by an engineer registered in Kentucky that the liner system, if required, and other features have been constructed in accordance with the approved plans and specifications.

(12) The cabinet may issue a permit subject to specific conditions which include, but are not limited to, types of wastes which may be accepted or disposed, special operating conditions, schedules for compliance for corrective action, and the issuance of other applicable permits of the cabinet.

Section 10. Signatures to Permit Applications and Reports. (1) Applications. All permit applications and modifications shall be signed as follows:

(a) For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

2. The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million; or

3. A person who, pursuant to a corporation resolution, is designated to act on behalf and bind the corporation on all matters relating to permit applications and modifications. A copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification.

(b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

(c) For a limited partnership, by a general partner; or

(d) For a municipality or state, federal, or other public agency, by a principal executive officer. For purposes of this paragraph, a principal executive officer includes:

1. The ranking elected official;

2. The chief executive officer of the agency;

3. A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

4. A person authorized, in writing, to sign on behalf of a person described in subparagraphs 1, 2, and 3 of this paragraph. The written authorization shall specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a position of equivalent responsibility. A duly authorized representative must thus be either a named individual or any individual occupying a named position.

(2) Reports. All reports required by permits, and other information requested by the cabinet, shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person shall be a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative must thus be either a named individual or any individual occupying a named position; and

(c) The written authorization is submitted to the cabinet.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."

Section 11. Past Performance Considered in Review. Past performance of the owner, operator, and key personnel, as defined in KRS 224.01-010(44), of the special waste site or facility shall be considered in the review for issuance or denial of the permit application and in the determination of any requirement for specialized conditions in accordance with KRS 224.40-330(1) and (3).

Section 12. Term and Expiration of Permits. (1) Permits-by-rule and registered permits-by-rule shall be perpetual unless modified or revoked by the cabinet. Permits-by-rule and registered permits-by-rule may be automatically revoked by the cabinet if the site or facility fails to meet the requirements of 401 KAR 30:031 or this chapter.

(2) Special waste site or facility construction permits shall be effective for a fixed term not to exceed five (5) years.

(3) Special waste landfill construction/operating permits shall be issued for the anticipated life of the facility. A shorter period may be specified by the cabinet.

(4) Special waste landfarming facility construction/operation permits shall be effective for a fixed term not to exceed ten (10) years. The cabinet shall review the conditions of the permit after five (5) years and modify the permit as necessary.

(5) For permits issued under this regulation for a term greater than five (5) years, the cabinet may reevaluate the terms and conditions of the permit any time prior to the expiration date of the permit. Issued permits may be reevaluated in accordance with the requirements of this chapter and KRS Chapter 224, including reevaluation of the bond. After reevaluation of the permit, the cabinet may require modifications of the permit pursuant to Section 1 of 401 KAR 45:040.

(6) Modification of term of permit. Except as provided in Section 14 of this regulation, the term of a permit shall not be extended by modification beyond the maximum duration specified in subsections (2) to (4) of this section.

(7) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsections (2) to (4) of this section.

Section 13. Renewal of Formal Permits. (1) Any application to renew a construction or construction/operation permit shall be submitted to the cabinet at least 180 days before the expiration date of the permit. Persons applying for the renewal of a permit shall use form DEP 7095 entitled "Application for Renewal of a Formal Permit" (March 1992). The requirements contained in the renewal application are incorporated in this regulation by reference. The cabinet may require that additional information be included in the application to ensure that a renewed permit conforms to the requirements of this chapter and KRS Chapter 224. The renewal application forms may be obtained from the Division of Waste Management, **14** [~~18~~] Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(2) Applications to renew a construction or construction/operation permit shall be subject to a review in accordance with the requirements of this chapter.

(3) The cabinet, in issuing a renewal, shall consider whether all conditions of prior permit conditions and agreed orders have been met. The cabinet may request updated information and impose additional or modified permit conditions when deemed appropriate.

Section 14. Continuation of Expiring Permits. (1) The conditions of an expired permit shall continue in force to ensure the safe disposal of waste until the effective date of a new permit if:

(a) The permittee has submitted a timely application for renewal

of a permit under Section 13 of this regulation. These applications shall be complete and the applicant shall have paid the appropriate fees due under 401 KAR 45:250;

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit; and

(c) The cabinet has not given written notice of permit expiration due to enforcement actions or other reasons.

(2) Effect. Permits continued under this section shall remain in full force and effect.

Section 15. Termination of Permits. Special waste site or facility permits shall automatically terminate on the expiration date unless the cabinet has reissued the permit or issued a continuation in accordance with Section 14 of this regulation.

Section 16. Confidentiality of Information. (1) Claims of confidentiality. Any information submitted to the cabinet pursuant to this chapter may be claimed as confidential by the applicant. Any such claim shall be asserted at the time of submission in accordance with KRS 224.10-210 and 400 KAR 1:060. If no claim is made in accordance with 400 KAR 1:060, the cabinet may make the information available to the public without further notice.

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential shall be denied.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 13, 1992
FILED WITH LRC: May 14, 1992 at 1 p.m.

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

401 KAR 45:040. Modification, transfer or revocation of special waste permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.40-330, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth the requirements for modification, transfer and revocation of special waste permits.

Section 1. Modification of Permits. A special waste site or facility permit may be modified during its term in accordance with this regulation. If a permit is modified, only the conditions subject to modification shall be reopened. A permit modification may be subject to public notice if the cabinet believes a significant degree of public interest exists with respect to an application. An application to modify a permit for a horizontal expansion beyond the permitted waste boundary shall require a public notice in accordance with 401 KAR 45:050.

(1) Modification of formal permits. Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a complete application to the cabinet. The permittee shall use form DEP 7094A entitled "Application for a Special Waste Landfill Permit," form DEP 7021B entitled "Application for a Special Waste Landfarming Facility Permit" or form DEP 7094D entitled "Application for a Special Waste Composting Facility" which are incorporated by reference in Section 2 of 401 KAR 45:030, or has submitted form DEP 7094B entitled "Application for a Research, Development, and Demonstration Permit" that is incorporated by reference in Section 2 of 401 KAR 45:135. The permittee shall complete the applicable sections of the application as directed by the cabinet.

(2) Modification of a registered permit-by-rule. **Registrants requesting a modification** [~~Modifications requested by the registrant~~] shall submit a new registration form in accordance with Section 4 of 401 KAR 45:070.

(3) Causes for modification. The following are causes for modification of formal permits by the cabinet:

(a) Material and substantial alterations or additions to the permitted special waste site or facility are being contemplated that justify new permit conditions that are different or absent in the existing permit;

(b) The cabinet determines that the special waste site or facility, as previously permitted, is not likely to comply with 401 KAR 30:031;

(c) The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable available remedy;

(d) Modification of a closure plan is required under this chapter;

(e) The cabinet receives notification of expected closure and finds that any of the permit conditions are no longer warranted;

(f) The cabinet adjusts the level of financial responsibility required;

(g) The corrective action program specified in the permit has not brought the waste site or facility into compliance with the groundwater protection standards within a reasonable period of time;

(h) To include a monitoring program meeting the requirements of 401 KAR 45:160;

(i) To approve a corrective action plan required by 401 KAR 45:160;

(j) To include conditions applicable in new or amended statutes and regulations;

(k) Modification is necessary to protect human health or the environment;

(l) To include conditions applicable as a result of a hearing or enforcement action as specified in 401 KAR Chapter 40;

(m) Ownership of the special waste site or facility changes;

(n) To expand the capacity of a special waste site or facility; or

(o) To add a new waste that contains different chemical characteristics than the waste source previously permitted.

Section 2. Procedures for Permit Modification. (1) A permit for a special waste site or facility may be modified either at the request of the permittee or upon the cabinet's initiative.

(2) If the permittee requests the modification, the cabinet decides whether the request is justified in accordance with Section 1 of this regulation or for other good cause shown. If the cabinet determines not to modify the permit, it shall notify the permittee in writing and give a reason for the decision.

(3) If the cabinet makes a preliminary decision to modify a permit under this regulation, the cabinet shall prepare a draft modified permit incorporating the proposed changes. If the permit modification is subject to public notice requirements, the permittee shall publish a notice in accordance with Section 4 of 401 KAR 45:050.

(4) The cabinet shall provide the permittee with a copy of the draft modified permit and allow ten (10) working days for comment. Comments received from the permittee shall be considered in finalizing the draft modified permit.

(5) The cabinet shall issue the modified permit after consideration of the comments or following the ten (10) day comment period if no comments are received.

(6) The owners or operators of a special waste site or facility may

request a hearing pursuant to KRS 224.10-420 within thirty (30) days of issuance of the permit modification by the cabinet.

(7) All terms of an existing permit remain in effect during the permit modification request.

(8) A permit modification requesting a horizontal expansion shall be subject to the requirements of public notice in accordance with 401 KAR 45:050. All draft permits for horizontal expansions shall be prepared under Sections 8 **and 9** of 401 KAR 45:030, and shall be based on the administrative record required by Section 3 of 401 KAR **45:050** [~~54:050~~].

Section 3. Transfer of Permits. (1) A permit is not transferable to any person without prior approval of the cabinet. For purposes of this section, a permit transfer application is required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.

(2) A person requesting to transfer a formal permit for an existing special waste site or facility shall use form DEP 7094C entitled "Application To Transfer Special Waste Permit" (March 1992). The requirements contained in the transfer application are incorporated in this regulation by reference. The cabinet may require that additional information be included in the application to ensure that the prospective owner or operator complies with the requirements of this chapter. The transfer application form may be obtained from the Division of Waste Management, **14** [~~18~~] Reilly Road, Frankfort, KY 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(3) The cabinet shall make a preliminary determination to approve or disapprove a formal permit transfer within 180 calendar days from the initial receipt of the application.

(4) If the transfer application is incomplete, the cabinet shall notify the applicant in writing of the deficiencies. Periods of deficiency shall not be counted against the review time frame specified in subsection (3) of this section. Failure to submit any required information noted by the cabinet within ninety (90) calendar days of receipt of the notice of deficiency is grounds for disapproval of the transfer application.

(5) If the cabinet makes a preliminary determination to approve the transfer application, the applicant shall publish a public notice in accordance with Section 4 of 401 KAR 45:050.

(6) After the public notice has been published by the applicant, the cabinet shall provide a public comment period in accordance with Sections 5 to 8 of 401 KAR 45:050.

(7) After the close of the public comment period, the cabinet shall make a final decision on the transfer application.

(8) A person requesting to transfer a registered permit-by-rule shall submit a registration in accordance with Section 2 of 401 KAR 45:070.

Section 4. Modification, Suspension and Revocation of a Permit. The cabinet may modify, suspend or revoke a permit issued under this chapter for:

(1) Violation of any requirement of KRS Chapter 224, this chapter, or 401 KAR 30:031.

(2) Aiding, abetting or permitting the violation of KRS Chapter 224, this chapter, or 401 KAR 30:031.

(3) Any action or omission associated with maintenance and operation of the facility that could or does create a threat to public health or the environment.

(4) Violations of a condition or a variance of the special waste site or facility permit.

(5) Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet.

(6) Failure to comply with an order issued by the cabinet.

(7) The facility is transferred to another person without prior approval of the cabinet.

(8) The cabinet shall follow the applicable procedures in this regulation and 401 KAR Chapter 40 in revoking any permit under this section.

(9) If a permit is revoked, the owner or operator may reapply.

(10) Owners or operators of special waste sites or facilities may file a request for a hearing pursuant to KRS 224.10-420 upon revocation of the permit.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 13, 1992
FILED WITH LRC: May 14, 1992 at 1 p.m.

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

401 KAR 45:060. Special waste permit-by-rule.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, conduct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth the requirements for a special waste permit-by-rule.

Section 1. Permit-by-Rule. Notwithstanding any other provision of this chapter, the following special waste sites or facilities shall be deemed to have a permit without the owner or operator having made application or registration with the cabinet, provided the operation is a practice common to the industry, is not in violation of 401 KAR 30:031, and does not present a threat or potential threat to human health or the environment:

(1) Oil production brine pits and gas and oil drilling mud pits, during the active life of the pit, if the **pit is subject to 401 KAR 5:090;** [~~owner or operator:~~

~~(a) Has a KPDES or NPDES permit; and~~

~~(b) Complies with the conditions of the KPDES or NPDES permit;~~]

(2) Temporary storage of special waste in piles;

(3) Injection wells used for disposal of special waste **subject to 401 KAR 5:090 or** in compliance with an underground injection control permit issued by the U.S. EPA;

(4) Surface mining impoundments and other special waste surface impoundments in substantial compliance with KPDES permits;

(5) Surface impoundments that treat domestic sewage and that do not contain any industrial wastewater, or are publicly owned treatment works for the treatment of domestic sewage, if the facility is in compliance with the KPDES or NPDES permit;

(6) Disposal of **coal combustion** fly ash, bottom ash, and scrubber sludge in an active mining operation, if the owner or operator of the mining operation:

(a) Has a mining permit issued under KRS Chapter 350 that includes the disposal of special waste; and

(b) Complies with the conditions of the mining permit; and

(7) Beneficial reuse of coal combustion by-products as an ingredient or substitute ingredient in the manufacturing of products, including but not limited to, cement, concrete, paint, and plastics;

anti-skid material; highway base course; structural fill; blasting grit; roofing granules; and mine stabilization and reclamation material; provided that:

(a) The utilization of coal combustion by-products does not result in the creation of a nuisance condition;

(b) Erosion and sediment control measures consistent with sound engineering practices are undertaken;

(c) The use is not within 100 feet of existing streams, 300 feet of existing drinking water wells, or floodplains or wetlands, unless permission has been obtained from the appropriate regulatory agency;

(d) The generator characterizes the nonhazardous nature of the coal combustion by-products; and

(e) The generator submits to the cabinet an annual report that identifies the type and amount of waste released for reuse; the name and address of each recipient of waste; and the specific use, if known, each recipient made of the waste.

Section 2. Noncompliances. (1) The cabinet may take any appropriate enforcement actions, including corrective action or revocation, if a special waste permit-by-rule site or facility is not operating in substantial compliance with Section 1 of this regulation.

(2) The cabinet may, at its discretion, require the owner or operator of a special waste permit-by-rule site or facility to upgrade the permit to a registered permit-by-rule to ensure that the requirements of this chapter and the environmental performance standards of 401 KAR 30:031 are met.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 13, 1992
FILED WITH LRC: May 14, 1992 at 1 p.m.

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

401 KAR 45:070. Special waste registered permit-by-rule.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This chapter establishes requirements for a special waste registered permit-by-rule.

Section 1. Registered Permit-by-rule. (1) Persons engaged in the following activities shall be required to register with the cabinet:

(a) Sludge giveaway in accordance with Section 8 of 401 KAR 45:100;

(b) Beneficial reuse of special waste not specified in Section 1(7) of 401 KAR 45:060; and

(c) Facilities that treat and store processed special waste for distribution under Section 10 of 401 KAR 45:100.

(2) Special waste registered permit-by-rule sites or facilities shall not store, treat, reuse, or dispose of special waste without first submitting a registration to the cabinet and receiving acknowledgement, in writing, by the cabinet of acceptance of the registration in accordance with Section 2 of this regulation.

Section 2. Registration Procedure for Registered Permit- by-rule. (1) Persons required to obtain a registered permit-by- rule shall complete, sign, and submit form DEP 7059D entitled "Registered Permit-by-rule for Sludge Giveaway" (March 1992), form DEP 7059F entitled "Registered Permit-by-rule for Beneficial Reuse" (March 1992), or form DEP 7059G entitled "Registered Permit-by-rule for Storage and Treatment of Processed Special Waste" (March 1992). The requirements contained in forms DEP 7059D, DEP 7059F, and form DEP 7059G are incorporated in this regulation by reference. The cabinet may require that additional information be included in a registration. These registration forms may be obtained from the Division of Waste Management, **14** ~~[18]~~ Reilly Road, Frankfort, KY 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(2) After submission of the appropriate registration form, the cabinet shall review the registration form. If the cabinet determines upon examination of the registration that it fails to include all of the required information, the cabinet shall notify the owner or operator that the registration is deficient and that the owner or operator shall submit the requested information.

(3) Owners or operators of a registered permit-by-rule site or facility may begin operation of the site or facility when the cabinet acknowledges in writing receipt of a complete registration form.

Section 3. Operation During a Registered Permit-by-rule. (1) A site or facility operating under a registered permit-by-rule, except as provided in Section 4 of this regulation, shall not:

(a) Store, treat, reuse, or dispose of special waste not specified in the registration form; or

(b) Exceed the design capacities specified in the registration form.

(2) The owner or operator of a registered permit-by-rule site or facility shall comply at all times with 401 KAR 30:031, this regulation, and other requirements imposed by the cabinet.

(3) The owner or operator of a registered permit-by-rule site or facility shall comply with the applicable provisions of 401 KAR 45:100.

Section 4. Changes To a Registered Permit-by-rule. (1) The owner or operator of a registered permit-by-rule shall submit a revised registration identifying new types of special waste to be stored, treated, reused, or disposed at a site or facility if the special waste type was not previously identified in the registration.

(2) The owner or operator shall submit a revised registration prior to increases in the design capacity of processes used at a facility.

(3) The owner or operator shall submit a revised registration prior to changes in the processes for the storage, treatment, reuse, or disposal of special waste or use of additional processes.

(4) The owner or operator shall submit a revised registration prior to changes in owners or operators of the site or facility.

(5) Changes listed in subsections (1) to (4) of this section shall not be implemented until the cabinet acknowledges in writing receipt of the revised registration.

Section 5. Noncompliances. The cabinet may take any appropriate enforcement actions, including corrective action or revocation, if a special waste registered permit-by-rule site or facility is not operating in compliance with this regulation.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 45:080. Financial requirements and bonds for special waste facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99, Chapter 355

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the managing, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth the financial requirements for closure and postclosure of special waste sites or facilities.

Section 1. Applicability. The financial assurance criteria and bond requirements apply to the owner or operator of special waste landfills, Type A landfarming and composting sites or facilities, and research, development and demonstration sites or facilities, and other sites or facilities if required by the cabinet.

Section 2. Closure Cost Estimate. The owner or operator shall have a detailed, current written estimate, in dollars, of the cost of hiring a third party to close the special waste disposal site or facility in accordance with the closure plan developed to satisfy the closure requirements in Section 4 of 401 KAR 45:100 and Section 5 of 401 KAR 45:110.

(1) The estimate shall equal the cost of closing the special waste disposal site or facility at the point in the active life when the extent and manner of its operation would make closure the most expensive. The cabinet may adjust the figure for inflation and other factors. The owner or operator shall base the cost estimate on the following elements:

(a) Design;
(b) Site grading and drainage;
(c) Hauling and placing of each element of the approved cap;
(d) Final grading and drainage of the cap;
(e) Revegetation of the cap; and
(f) Quality control and construction certification.

(2) The owner or operator shall increase the closure cost estimate and the amount of financial assurance provided under Section 5 of this regulation if changes to the closure plan or special waste disposal site or facility conditions increase the maximum cost of closure at any time during the active life.

(3) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under Section 5 of this regulation if he can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the special waste disposal site or facility.

(4) The owner or operator shall keep a copy of the latest closure cost estimate at the special waste disposal site or facility until the owner or operator has been notified by the cabinet that he has been released from closure financial assurance requirements under Section 5 of this regulation.

Section 3. Postclosure Cost Estimate. (1) The owner or operator shall have a current, detailed written estimate, in dollars, of the cost of hiring a third party to conduct each phase of post-closure monitoring and maintenance of the special waste site or facility in accordance with the post-closure plan developed to satisfy the postclosure requirements of Section 4 of 401 KAR 45:100 and Section 5 of 401 KAR 45:110. The postclosure cost estimate for each phase of postclosure used to demonstrate financial assurance in Section 6 of this regulation shall be calculated by multiplying the annual cost estimate for each phase of postclosure by the number of years of postclosure care required.

(2) The cost estimate for each phase of postclosure shall be based on the most expensive costs of postclosure during that phase.

(3) The owner or operator shall increase the amount of the postclosure cost estimate and the amount of financial assurance provided under Section 6 of this regulation if changes in the postclosure plan or facility conditions increase the maximum costs of postclosure.

(4) The owner or operator may request a reduction in the postclosure cost estimate and the amount of financial assurance provided under Section 6 of this regulation if he can demonstrate to the satisfaction of the cabinet that the cost estimate exceeds the maximum costs of postclosure remaining over the postclosure period.

(5) The owner or operator shall keep a copy of the latest postclosure cost estimate at the site or facility until he has been notified by the cabinet that he has been released from postclosure financial assurance requirements for the entire facility under Section 6 of this regulation.

Section 4. Financial Mechanisms. The owner or operator shall use one (1) of the financial mechanisms specified in Section 7 or 10 of this regulation, which satisfies the following criteria:

(1) The financial assurance mechanism shall ensure that the amount of funds is sufficient to cover the costs of closure and postclosure care;

(2) The financial assurance mechanisms shall ensure that funds shall be available in a timely fashion; and

(3) The financial assurance mechanisms shall guarantee the availability of the required amount of coverage prior to the initial receipt of special waste.

Section 5. Closure Financial Assurance. The owner or operator of a special waste site or facility subject to this regulation shall establish, in accordance with Section 4 of this regulation, financial assurance for closure of the facility, in an amount equal to the most recent closure cost estimate prepared in accordance with Section 2 of this regulation. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements pursuant to Section 4 of 401 KAR 45:100 or Section 5 of 401 KAR 45:110.

Section 6. Postclosure Financial Assurance. The owner or operator of a special waste site or facility subject to the regulation shall establish, in accordance with Section 4 of this regulation, financial assurance for postclosure care of the facility, in an amount equal to the most recent postclosure cost estimate prepared in accordance with Section 3 of this regulation. The owner or operator shall provide continuous coverage for postclosure until released from the financial assurance requirement pursuant to Section 4 of 401 KAR 45:100 or Section 5 of 401 KAR 45:110.

Section 7. Performance Bond. (1) Before the cabinet shall issue a construction/operation permit, the owner or operator of a special waste site or facility that is required to post financial assurance pursuant to this regulation shall complete a performance bond on Form DEP 7094E entitled "Performance Bond" (March 1992). The requirements contained in the performance bond are incorporated in this regulation by reference. The performance bond may be obtained from the Division of Waste Management, **14** ~~[18]~~ Reilly Road, Frankfort, Ky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(2) To satisfy the financial requirement, the owner or operator shall submit a performance bond and one (1) of the following:

(a) A surety bond which is executed by filling in the required information on the performance bond submitted in accordance with subsection (1) of this section and by submitting a copy of the surety bond agreement to the cabinet;

(b) A letter of credit as set forth on Form DEP 7094F entitled "Irrevocable Letter of Credit" (March 1992). The requirements contained in the irrevocable letter of credit are incorporated in this regulation by reference. The irrevocable letter of credit may be obtained from the Division of Waste Management, 14 [18] Reilly Road, Frankfort, Kentucky, 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(c) An escrow agreement as set forth on Form DEP 7094G entitled "Escrow Agreement" (March 1992). The requirements contained in the escrow agreement are incorporated in this regulation by reference. The escrow agreement may be obtained from the Division of Waste Management, 14 [18] Reilly Road, Frankfort, Kentucky 40601, (502) 564- 6716, between the hours of 8:00 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(4) Other financial assurance as specified in Section 10 of this regulation.

Section 8. Release of Financial Assurance. (1) Financial assurance posted to assure proper closure of a special waste landfarming or composting facility shall be released in accordance with Section 4 of 401 KAR 45:100.

(2) Financial assurance posted to assure proper closure of a special waste landfill shall be released in accordance with Section 5 of 401 KAR 45:110.

Section 9. Financial Assurance for Publicly Owned Facilities. The owner or operator of a publicly owned facility shall provide a budget for the permitting, construction, operation, closure, and postclosure care of the facility. The budget shall be revised and submitted annually. When elements of the facility's permitting, construction, operation, closure, or postclosure care are to be accomplished by contract or agreement, a copy of the contract or agreement shall be submitted to the cabinet.

Section 10. Financial Assurance for Captive Facilities. The cabinet may accept other satisfactory financial assurance as adequate financial responsibility for a special waste site or facility which is exclusively owned and operated by a special waste generator on property owned by the special waste generator for the purpose of accepting special waste exclusively from the special waste generator.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 45:090. Special waste operator certification.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-100, 224.40-305, 224.40-605, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, conduct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation establishes the program for education, testing, and certification of operators of special landfarming sites or facilities in accordance with KRS 224.40-605.

Section 1. Applicability. (1) The requirements of this regulation apply to all special waste landfills, landfarms, and composting facilities operating under formal permits, as identified in 401 KAR 45:020, Section 2(1)(a) and (b).

(2) The owner or operator shall ensure that all technical operations at the special waste site or facility are conducted by or under the direction of an individual with a valid certification under this regulation. The landfill, landfarming, or composting operator shall be reasonably available at the site or facility during operation.

(3) The certified operator shall ensure that all operations are conducted in compliance with this chapter.

(4) A special waste site or facility permit may be revoked or subject to other enforcement actions upon violation of the requirements of this regulation.

Section 2. Transition of Certification. (1) Persons holding a valid certification for landfill manager, landfill operator, and landfarming operator under 401 KAR 47:070 shall be deemed to hold a valid certification under this chapter until the certification expires. At the time a certification expires, the certificate holder shall obtain special waste certification under this regulation.

(2) Persons operating a special waste landfill who were not previously certified to operate a residual landfill under 401 KAR Chapter 47 shall obtain certification under this chapter within one (1) year of the effective date of this regulation.

(3) Persons operating a special waste composting or landfarming site or facility shall obtain certification within one (1) year of the effective date of this regulation.

Section 3. General Provisions for Landfills. (1) Each special waste landfill shall have a landfill operator certified in accordance with this regulation.

(2) No special waste landfill shall operate in the absence of a certified operator without the appointment of an interim operator in accordance with Section 11 of this regulation.

Section 4. General Provisions for Landfarming and Composting Facilities. (1) Each landfarming or composting facility shall have an operator certified in accordance with this regulation.

(2) No landfarming or composting facility shall operate in the absence of a certified operator without the appointment of an interim operator in accordance with Section 11 of this regulation.

Section 5. Application for Certification. (1) Persons desiring to be certified shall submit an application at least thirty (30) days prior to the scheduled training class. Applicants for training and examination shall use form DEP 6031 entitled "Application for Certification" (March 1992). The requirements contained in the application for certification are incorporated in this regulation by reference. The application may be obtained from the Division of Waste Management, 14 [18] Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(2) The cabinet shall review applications and supporting documents, determine the eligibility of the applicant for examination, and notify the applicant of the determination.

(3) No person shall be eligible for examination for certification unless that person completes the appropriate training course provided by the cabinet, unless an alternative training program is accepted by

the cabinet in accordance with Section 6 of this regulation.

Section 6. Training Course Requirements. (1) The cabinet shall provide training courses for individuals desiring to become certified. All applicants for certification shall be required to attend a training course provided by the cabinet, unless alternate training is accepted under subsection (3) of this section.

(2) The training course shall address the technical and legal aspects of the facility type for which operator certification is sought.

(a) The training course for landfill operators shall include:

1. Permit application requirements for special waste landfills, including technical and administrative requirements;
2. Waste characterization;
3. Chemical and biologic reactions associated with the waste;
4. Hydrogeologic and engineering factors associated with the facility;
5. Operational requirements and achieving compliance with 401 KAR 30:031;
6. Duties and responsibilities associated with landfill management;
7. Requirements of this chapter as they apply to facility operation, including environmental monitoring, operations requirements, and maintaining compliance with 401 KAR 30:031;
8. Evaluating site suitability to receive wastes;
9. Environmental considerations in preventing violations of this chapter;
10. Maintaining equipment; and
11. Facility safety.

(b) The training course for landfarm and composting operators shall include:

1. Requirements of this chapter as they apply to facility operation and management;
2. Wastewater treatment processes;
3. Waste characterization;
4. Chemical and biological reactions associated with the waste;
5. Landfarming design and management;
6. Permit application requirements for special waste landfarms;
7. Environmental considerations in preventing violations of this chapter;
8. Achieving and maintaining compliance with 401 KAR 30:031;
9. Evaluating site suitability to receive waste;
10. Maintaining equipment;
11. Facility safety; and
12. Duties and responsibilities associated with operating a landfarm.

(3) The cabinet may accept alternate training courses, provided they result in a level of competence equivalent to that of participation in the cabinet's training course. It shall be the applicant's responsibility to submit documentation as the cabinet requires for an equivalency judgement of the alternate training course. This information shall contain at a minimum the following specifics: the course name; sponsoring agency; the date, location, and beginning and ending times of the course; a summary of the course content of sufficient detail to determine relevance and quality of the course; and a copy of the certificate received.

Section 7. Training and Examinations. (1) After training is complete, time shall be set aside for the purpose of examinations to determine the knowledge and ability of the applicant.

(2) Separate examinations shall be prepared to cover basic differences in the duties and responsibilities for the operation of each category of special waste site or facility.

(3) Applicants who fail to pass an examination may reapply for the examination at a regularly scheduled examination or by appointment with the cabinet. The cabinet shall require the applicant to attend the training session again if the applicant fails to pass the examination in three (3) attempts.

Section 8. Education and Equivalencies. (1) All applicants shall be evaluated by the cabinet as to education and experience as related to the appropriate category of special waste site or facility.

(2)(a) Applicants for landfill operator shall have completed high school, by graduation or by obtaining an equivalency certificate, and shall have a minimum of one (1) year of experience at a landfill facility.

(b) If an applicant for landfill operator does not meet the requirements of paragraph (a) of this subsection, the cabinet may consider the number of years of experience in operating a landfill or experience in a related field such as heavy equipment operator, road construction, surface mining.

(3)(a) Applicants for landfarming or composting operator shall have completed high school, by graduation or by obtaining an equivalency certificate, and shall have a minimum of one (1) year of experience at a landfarming **or composting** facility.

(b) If an applicant for landfarming or composting operator does not meet the requirements of paragraph (a) of this subsection, the cabinet may consider the number of years of experience in operating a landfarming facility or experience in a related field such as wastewater treatment or water treatment in determining eligibility for examination on a year-for-year basis.

Section 9. Issuance of a Certificate. (1) Certification may be issued to individuals upon meeting the minimum education requirements, work experience, and the course work requirements of this regulation and passing the examination in accordance with Section 5 of this regulation.

(2) Certification shall not be valid if obtained through fraud, deceit, or the submission of inaccurate data.

Section 10. Issuance of Certificate. (1) A certification shall be issued for a period of five (5) years, at the end of which the certification shall expire, unless renewed. Renewal procedures and requirements shall be the same as those for a new certification.

(2) The certification of an operator whose employment at a special waste site or facility terminates shall remain valid until expiration or revocation of certification.

(3) Certificates shall be carried on the person of the certified operator during working hours at the facility, or shall be prominently displayed at the facility office.

(4)(a) The cabinet may revoke the certification of an operator if the operator:

1. Has practiced fraud or deception;
2. Has failed to perform his duties under this chapter;
3. Has failed to use reasonable care and judgement in performance of his duties under this chapter; or
4. Has knowingly or willfully violated the requirements of this chapter.

(b) Individuals who have had their certification revoked shall be ineligible for future recertification.

Section 11. Interim Operators. (1) The permittee shall be responsible for actions of an interim operator. The permittee shall notify the cabinet in writing if the special waste site or facility will not have a certified operator for more than fourteen (14) consecutive operating days.

(2) Consecutive operating days, as used in subsection (1) of this section, shall be determined as any days:

(a) When the special waste site or facility accepts waste, operates equipment, or otherwise performs the business of special waste management; and

(b) That occur in sequence, regardless of whether nonoperating days such as weekends or holidays fall in between.

(3) The notification required by subsection (1) of this section shall be provided at least ten (10) days prior to an anticipated absence, and immediately upon discovery of an unanticipated absence. The

notification shall contain:

(a) The name, address, and qualifications of the interim operator;

(b) The length of time for which the permittee seeks to have an interim operator rather than a certified operator; and

(c) Reasons for replacement of the certified operator with an interim operator.

(4) The cabinet shall evaluate the qualifications of the designated interim operator and shall notify the permittee of the cabinet's determination in writing within thirty (30) days of receipt of the permittee's notice. The determination shall:

(a) Approve, conditionally approve, or deny the permittee's request for designation of the interim operator;

(b) Identify the length of time an interim operator may operate the special waste site or facility; and

(c) Specify conditions as appropriate to the site and the interim operator's qualifications.

(5) An interim operator shall obtain certification under this regulation within fifteen (15) months of becoming an interim operator.

(6) The cabinet may revoke the appointment of an interim operator in accordance with Section 10(4)(a) of this regulation. Revocation shall render the person ineligible for operator certification under Section 10(4)(b) of this regulation.

Section 12. Fees. (1) Fees for application for certification shall be:

(a) $125 for application for certification as a landfill operator;

(b) $125 for certification as a landfarming **or composting** operator;

(c) Fifty (50) dollars for certification by reciprocity for all categories of operator; and

(d) $100 dollars for attendance at the certification training without taking the examination.

(2) Fees shall accompany applications and shall not be returned to those who do not qualify for a certificate.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 45:100. Landfarming and composting of special waste.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50, 7 USC 136 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-100, 224.40-305, 224.50-760, 7 USC 136 et seq.

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth requirements for special waste landfarming sites or facilities and special waste composting sites or facilities.

Section 1. Applicability. The requirements in this regulation apply to any person disposing of or treating special waste by landfarming or composting.

Section 2. Classifications of Special Waste Landfarming and Composting Sites or Facilities. A special waste landfarming or composting site or facility is classified as a Type A or Type B facility after the cabinet reviews the Notice of Intent filed pursuant to Section 3 of this regulation. The classification is based on the type and quantity of sludge or other special waste to be accepted at the landfarm or composting site or facility. The following classifications are established:

(1) A Type A landfarm or composting facility is a site or facility that accepts Type A wastewater treatment sludge or other special waste. Type A wastewater treatment sludge is sludge with the following parameters:

Cadmium	Greater than 10 mg/kg;
Copper	Greater than 450 mg/kg;
Lead	Greater than 250 mg/kg;
Nickel	Greater than 50 mg/kg;
Zinc	Greater than 900 mg/kg.

(2) A Type B landfarm or composting facility is a site or facility that accepts Type B wastewater treatment sludge or other special waste. Type B wastewater sludge is sludge with the following parameters:

Cadmium	Less than or equal to 10 mg/kg;
Copper	Less than or equal to 450 mg/kg;
Lead	Less than or equal to 250 mg/kg;
Nickel	Less than or equal to 50 mg/kg;
Zinc	Less than or equal to 900 mg/kg.

The maximum amount of wastewater treatment sludge that may be processed by a Type B landfarm or composting site or facility is 250,000 gallons or 250 tons (dewatered) per calendar year. If the owner or operator is processing Type B sludge and exceeds this volume limitation, then the site or facility shall be classified as a Type A landfarm or composting facility. Unless otherwise required by the cabinet, an applicant for a Type B landfarming or composting permit shall be exempt from the requirements of publishing a public notice, the posting of financial assurance, the monitoring of groundwater, and postclosure care.

(3) One (1) time only disposal. An applicant for one (1) time only disposal of special waste by landfarming or composting methods shall submit an application for a Type B landfarming or composting facility unless otherwise directed by the cabinet.

(4) Other special waste. An application to landfarm or compost special waste other than municipal wastewater treatment sludge shall be classified using the parameters set forth in subsections (1) and (2) of this section and additional parameters based upon the source, chemical and physical characteristics of the waste, the volume of waste, and the waste potential for adverse impact on human health or the environment. After review of the notice of intent filed pursuant to Section 3 of this regulation, the cabinet shall classify the site or facility as either a Type A or Type B landfarming or composting facility. The applicant shall comply with all requirements in this chapter for the designated type of landfarming or composting facility.

(5) **A facility composting a Type A** [~~A special waste composting facility that exceeds the metals limits for Type A~~] wastewater sludge may, at the discretion of the cabinet, be classified as a Type B facility depending upon the volume of special waste received, methods of composting and siting considerations.

(6) A special waste landfarm or composting site or facilities classification under this section shall be reevaluated based upon the annual analyses submitted under Section 6(19) or 9(5) of this regulation. The cabinet may reassign a landfarming or composting site or facility classification based on this submittal and require the owner or operator of the landfarm or composting site or facility to modify the permit accordingly.

(7) Classification under this section shall be based on the average concentration of these metals in a minimum of two (2) consecutive samples taken no closer than thirty (30) days apart. Metal concentration values shall be determined on a dry weight basis. Analysis shall

be accomplished by determining the heavy metal concentration of the undried sample (wet weight) and converting to dry weight using percent solids. The following formula shall be used: mg/L or mg/kg (wet weight) divided by (% solids/100) = mg/kg dry weight. A singie metal parameter shall be sufficient to require a sludge to be classified as Type A.

Section 3. Application Procedure for a Special Waste Landfarming or Composting Permit. (1) Notice of intent to apply. An applicant for a special waste landfarming or composting permit shall submit a notice of intent to apply as required under Section 8(1)(b) or (c) of 401 KAR 45:030. Upon review of the notice of intent to apply, the cabinet shall notify the applicant of the waste classification determination and designate the landfarming or composting facility as either a Type A or Type B facility. An applicant may be exempt from submitting a notice of intent prior to submitting the permit application required in subsection (2) of this section if the applicant is classifying itself as a Type A facility. However, the applicant is required to submit a notice of intent form with the permit application specified in subsection (2) of this section.

(2) Contents of landfarming or composting permit application. Upon determination of a waste classification, a person shall submit the designated permit application for a special waste landfarming or a composting facility as specified in Section 8(1)(b) or (c) of 401 KAR 45:030 to the cabinet. A landfarming application may include parcels of land that are not located contiguously.

(3) An applicant for a landfarming or composting facility permit shall comply with applicable requirements for a formal permit as specified in 401 KAR 45:030. An applicant for a Type A landfarming or composting facility shall also comply with the public notice requirement in 401 KAR 45:050, the financial assurance requirements of 401 KAR 45:080, the surface and groundwater requirements of 401 KAR 45:160, and the postclosure requirements of Section 4 of this regulation.

(4) Upon examination of geological aspects and other relevant factors in the permit application by the cabinet, the applicant may be required to prepare a groundwater monitoring plan to include location and specifications of wells, monitoring parameters and monitoring schedules in accordance with 401 KAR 45:160. This plan shall be required for Type A landfarms or composting facilities.

(5) The cabinet shall not allow landfarming or composting practices that may present a threat to human health or the environment. The cabinet shall base a decision as to the land application or composting suitability of a particular special waste upon the ability of the waste to biodegrade in the environment, the potential for the waste to be managed in a manner consistent with 401 KAR 30:031, the likelihood that waste constituents will contaminate surface water or groundwater, the potential for nuisances from odors or unsightly conditions, and the potential for the waste to harm human health or the environment.

Section 4. Closure and Postclosure of Landfarming and Composting Facilities. (1) An owner or operator permanently ceasing to accept waste at a Type A or Type B special waste landfarming or composting site or facility shall submit to the cabinet a closure report that includes:

(a) The results of final soil samples taken in accordance with the construction/operation permit within eighteen (18) months following the last application of waste;

(b)1. Landfarming sites or facilities shall submit a historical summary of all landfarming, by subplot, showing the allowable and actual rates of special waste application, heavy metals and nitrogen, incorporating the annual landfarming review as set forth in Section 6(19) of this regulation; or

2. Composting sites or facilities shall prepare a historical summary of composting activities at the site incorporating the annual composting review report as set forth in Section 9(5) of this regulation.

(c) A certification from the owner or operator that the site or facility is closed and is in compliance with 401 KAR 30:031; and

(d) Any additional information required by the cabinet in the original landfarming or composting permit.

(2) The cabinet shall review the closure report and determine whether any additional monitoring or information shall be required to assure compliance of the site or facility with 401 KAR 30:031. If the site is not in conformance with 401 KAR 30:031 or the requirements of this chapter, the cabinet may take appropriate enforcement actions for violations of this chapter or KRS Chapter 224.

(3) A two (2) year postclosure monitoring maintenance period commencing on the first day after the facility permanently ceases accepting waste is required for all Type A landfarming and composting facilities and for any other landfarming or composting facility required to conduct groundwater or surface water monitoring under 401 KAR 45:160. During the postclosure monitoring and maintenance period, the owner or operator shall conduct groundwater and surface monitoring as required by 401 KAR 45:160, the facility's approved groundwater and surface water monitoring plans, and the terms of the facility's special waste permit.

(4) At the conclusion of the two (2) year postclosure monitoring and maintenance period, the owner or operator shall submit a certification that postclosure is complete and that the site or facility is in compliance with 401 KAR 30:031 and the terms of this chapter. The cabinet shall review the postclosure certification and if no additional monitoring or information is required and the site or facility is not subject to any enforcement actions for violations of this chapter or KRS Chapter 224, then the cabinet shall accept the owner's or operator's certification of postclosure.

(5) Upon acceptance of certification of postclosure, the cabinet shall release the financial assurance bond.

(6) The two (2) year postclosure monitoring and maintenance period may be extended if groundwater contamination as specified in Section 5 of 401 KAR 45:160 is documented and the owner or operator is required to submit a groundwater assessment plan.

(7) Any necessary environmental remediation steps or corrective action for groundwater contamination required under 401 KAR 45:160 shall be performed before the special waste landfarm or composting site or facility postclosure is certified as complete and financial assurance is released.

Section 5. Siting Requirements for Landfarming. Special waste landfarming sites or facilities shall comply with the following siting requirements:

(1) Waste shall not be applied in the 100-year floodplain unless the waste is injected or incorporated;

(2) Land application units shall have a minimum of four (4) feet of soil between the soil surface and both the seasonal high water table and bedrock;

(3) Waste shall not be applied on soils with a permeability rate greater than six (6) inches per hour or less than two-tenths (0.2) inches per hour; and

(4) Land application units shall not be located on land with a slope greater than fifteen (15) percent.

(5) All landfarming facilities shall comply with 401 KAR 30:031 and shall maintain the following buffer zones:

Required Buffer Zones
Minimum Distance in Feed From the Boundary
of the Application Zone

Structure or Object	Subsurface Injection or Incorporation	Surface Application
Residences & Occupied Buildings	200	300
Water Well	200	300
Surface Water Body	200	300
Karst Feature	200	300
Perennial Stream	200	300
Intermittent Stream	30	50
Ephemeral Stream	30	50
Property Line	30	50
Public Road	30	50

Section 6. Operating Requirements for Special Waste Landfarming Facilities. Special waste landfarming sites or facilities shall comply with the following:

(1) Prior to applying sludges to the land, all sludges shall be processed to significantly reduce pathogens as specified in Section 12 of this regulation.

(2) An operator certified in accordance with 401 KAR 45:090 shall be available at the landfarming site during special waste application. All sludge applications shall be accomplished under the direction of a certified landfarming operator.

(3) When surface application is used in conjunction with soil incorporation methods, incorporation shall occur within forty-eight (48) hours of sludge application.

(4) Surface application without incorporation into the soil shall not be used on land without established vegetative cover or crop residue of at least seventy-five (75) percent.

(5) No hazardous wastes or mixtures of hazardous and solid waste shall be disposed at, discharged to, or placed in a landfarming site.

(6) No toxic wastes or mixtures of toxic and nontoxic wastes regulated under 7 USC 136 et seq. (the Toxic Substances Control Act) shall be disposed at, discharged to, or placed in a landfarming site.

(7) The following agricultural use restrictions shall apply:

(a) Land spreading shall not occur on land where leafy vegetables or root crops for human consumption will be harvested within twelve (12) months;

(b) Land spreading shall not occur on land where crops for direct human consumption will be harvested within two (2) months;

(c) Dairy grazing shall be prohibited for six (6) months after land spreading. Other livestock grazing shall be prohibited for three (3) months;

(d) If the annual application rate of cadmium exceeds 0.44 pound per acre, food chain crops shall not be utilized in the cropping season following land application; and

(e) Special waste shall not be land spread where tobacco is to be harvested within five (5) years of waste application, if the annual application rate of cadmium from the sludge exceeds 0.44 pound per acre at any time during the life of the site.

(8) The general public shall be restricted from the application zone for a period of twelve (12) months after each application, unless the waste has undergone a process to further reduce pathogens in accordance with Section 12 of this regulation.

(9) Waste shall not be land spread on frozen, snow-covered, ice-covered, or water-saturated soil, or during any precipitation event.

(10) No waste shall be applied in excess of schedules and rates of waste application approved by the cabinet.

(11) No raw or unstabilized waste shall be landfarmed. The permittee shall maintain compliance with the ambient air quality standard for odor, as set forth in 401 KAR 53:010.

(12) The amount of any single surface application shall not be greater than an average one-half (1/2) inch in thickness.

(13) High pressure spray irrigation of sludge which produces aerosols shall be prohibited.

(14) Subplots shall be staked or otherwise clearly marked in the field.

(15) The owner or operator shall have a sign located at the entrance to the landfarming facility. The sign shall indicate the source and type of waste and the type of operation, the name of operator, the permit number, the contact person and the emergency telephone number.

(16) Surface water or waste ponding within the application zone shall be prohibited.

(17) Surface run-off and run-on shall be controlled to minimize the possibility of applied waste contaminating nearby surface water or adjacent land areas.

(18) Records of all landfarming activities shall be maintained on forms provided by the cabinet throughout the operation of the site. The records shall at a minimum contain the schedules and rates of waste application and all laboratory analyses. Records shall be made available to the cabinet upon request.

(19) Each landfarming owner or operator shall submit an annual report of landfarming activities to the cabinet sixty (60) days prior to the anniversary date of the permit issuance. The report shall be submitted on form DEP 7048 entitled "Annual Landfarming Review" (March 1992). The requirements contained in the annual landfarming review are incorporated in this regulation by reference. The review may be obtained from the Division of Waste Management, 14 ~~[18]~~ Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(20) Operational monitoring shall be performed on the following schedule:

(a) Soil shall be sampled annually in accordance with the soil monitoring plan in the approved permit application; and

(b) Waste from municipal wastewater treatment, municipal water treatment facilities shall be sampled in accordance with the following table, or more frequently if required by the cabinet. Other waste shall be sampled in accordance with a schedule approved by the cabinet. Waste shall be analyzed for solids content, pH, ammonium nitrogen (NH_4-N), nitrate nitrogen (NO_3-N), total Kjeldahl nitrogen, total phosphorus, total potassium, PCBs, chromium, copper, zinc, nickel, lead, and cadmium. Laboratory analysis results shall be reported in milligrams per kilogram wet and dry weight.

Required Sampling Schedule

Design Treatment Capacity (gallons per day)	Samples Per Year
Less than 1,000,000	2
1,000,001 - 10,000,000	4
More than 10,000,000	12

(21) Soil pH shall be maintained at six and five-tenths (6.5) or greater during crop production, hay production, or grazing.

(22) Special waste containing concentrations of PCBs greater than one (1) milligram per kilogram shall not be landfarmed.

(23) The maximum amount of metals from special waste that may be applied during the life of the site shall be based upon the cation exchange capacity (CEC) of the soil and shall be as follows:

Parameter	Maximum Amount of Metals Cation Exchange Capacity (meq/100g) 0-5	5-15	15+
Lead	500 lbs/ac.	1000 lbs/ac.	2000 lbs/ac.
Cadmium	4.46 lbs/ac.	8.92 lbs/ac.	17.84 lbs/ac.
Copper	125 lbs/ac.	250 lbs/ac.	500 lbs/ac.
Nickel	50 lbs/ac.	100 lbs/ac.	200 lbs/ac.
Zinc	250 lbs/ac.	500 lbs/ac.	1000 lbs/ac.

The following equation shall be used to determine the maximum number of tons of waste per acre that may be land spread without exceeding the above limitations:

$$\text{Tons waste/acre} = \frac{\text{(lbs per acre for each parameter Table 4)}}{\text{(dry mg/kg of metal in waste sample)} \times 0.002} \quad (24)$$

The amount of nitrogen land spread shall not exceed the nitrogen utilization rate of the vegetative cover in the application zone.

(25) If the laboratory analyses and calculations to determine quantities of metals applied to the soil discloses that the cumulative concentration of a contaminant is above the maximum level permitted under subsection (23) of this section, a written notice shall be given to the cabinet within ten (10) days of receipt of the monitoring results. The owner or operator shall cease further landfarming and submit to the cabinet within forty-five (45) days a report describing proposed corrective actions to be taken by the owner or operator. A notice shall be recorded on the property deed within forty-five (45) days of receipt of the monitoring results stating that the property has received special waste at concentrations exceeding permitted levels, and that food chain crops shall not be grown due to possible health hazards.

(26) In addition to the operating requirements in this section, the owner or operator who is landfarming Type A sludge shall sample surface water quarterly. Parameters to be monitored shall include pH, ammonium nitrogen (NH_4-N), fecal coliform bacteria, chromium, biological oxygen demand, total organic carbon, and total dissolved solids. A minimum of one (1) upgradient and one (1) downgradient sampling point shall be required.

(27) Owners and operators of Type A landfarming or composting facilities and all other designated facilities shall conduct groundwater monitoring in accordance with 401 KAR 45:160.

(28) If heavy metal applications exceed the amounts listed in subsection (23) of this section, the owner or operator shall immediately commence closure of the facility and immediately submit a closure report containing the information required by Section 4(1) of this regulation. The report shall also include a copy of the notice in the deed advising all future landowners in perpetuity that heavy metal concentrations exceed those allowed by this regulation.

(29) Landfarming sites and facilities shall comply with all requirements set forth in 401 KAR 45:140.

Section 7. Application Rates for Landfarming Sites or Facilities. (1) The annual application rate shall be the lesser of the application rates as determined for cadmium and for nitrogen utilization.

(2) Determine the percent of available organic nitrogen in the special waste using the following calculation: Percent available organic N = (percent total N) - (percent NH_4-N) - (percent NO_3-N).

(3) Determine the amount of nitrogen that shall be available for plant uptake at the landfarming site using one (1) of the following calculations depending on the application method:

(a) Incorporation: Lbs available N/ton = (percent NH_4-N x 20) + (percent NH_3-N x 20) + (percent available organic N x 4).

(b) Surface application: Lbs available N/ton = (percent NH_4-N x 10) + (percent NO_3-N x 20) + (percent available organic N x 4).

$$\text{Tons/acre} = \frac{\text{Nitrogen Utilization Rate of the Vegetative Cover}}{\text{Lbs available organic N/ton}}$$

(4) The annual application rate of cadmium from special waste shall not exceed 0.44 pound per acre. The annual application rate shall be determined using the following calculation:

$$\text{Tons/acre} = \frac{\text{pounds of allowable cadmium per acre}}{\text{(mg per kg of cadmium in sample)} \times 0.002}$$

Section 8. Sludge Giveaway Program. A municipal water or wastewater treatment sludge generator may give away sludge equal to or less than the metal concentration limitation specified in Section 2(2) of this regulation to persons for subsequent use as a soil conditioner. This program shall be operated under a registered permit-by-rule in accordance with this regulation and 401 KAR 45:070. The maximum amount of sludge that may be distributed annually to any person is limited to 2000 pounds (dry weight).

(1) During operation of the giveaway program the generator shall:

(a) Maintain a list of names and addresses of all persons receiving the sludge;

(b) Submit annually to the cabinet the sludge analysis performed in accordance with the schedule contained in Section 6(20) of this regulation, and a copy of the distribution log;

(c) Provide to persons receiving waste, copies of the sludge analyses and a brochure, approved by the cabinet, explaining the proper procedures to be utilized in the landfarming of sludge; and

(d) Use a process to significantly reduce pathogens in accordance with Section 11 of this regulation.

(2) Unless the sludge has undergone a process to further reduce pathogens in accordance with Section 12 of this regulation, it shall not be used in a manner likely to allow direct human contact for a period of twelve (12) months from the date of application.

(3) The sludge generator shall maintain another approved means of sludge disposal.

Section 9. Operating Requirements for Composting Facilities. Composting facilities shall comply with the following:

(1) The owner or operator shall dispose in a permitted waste management facility any materials that do not meet standards for distribution within one (1) month of such a determination;

(2) After the compost has completed the curing process, at least seventy-five (75) percent of the compost shall be distributed within one (1) year;

(3) Use one (1) or more processes to further reduce pathogens in accordance with Section 12 of this regulation;

(4) Process and store compost on an impermeable pad, or provide information on soils at the facility and a groundwater quality assurance plan;

(5) Each composting owner or operator shall submit an annual report to the cabinet sixty (60) days prior to the anniversary date of the permit issuance. The report shall besubmitted on form DEP 7048A entitled "Annual Composting Review" (March 1992). The requirements contained in the annual composting review are incorporated in this regulation by reference. The review may be obtained from the Division of Waste Management, 14 ~~[18]~~ Reilly Road, Frankfort, Kentucky 40601 (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday; and

(6) Composting sites or facilities shall comply with all requirements set forth in 401 KAR 45:140.

Section 10. Usage of Composted and Treated Special Waste. (1) Composted special waste and treated special waste that has undergone additional treatment to a level of a process to further reduce pathogens, as described in Section 12 of this regulation, shall meet the following criteria in order to be distributed or marketed to the general public:

(a) The final product shall not exceed Type B metals concentration limits as specified in Section 2(1)(b) of this regulation.

(b) A brochure shall accompany all compost or treated special waste sold or given away. The brochure shall be subject to cabinet approval and shall contain, at a minimum, the following information:

1. The source or sources of the original material;

2. A recent analysis within six (6) months of the finished product; and

3. Suggested uses and application rates for the product; and

(c) The quantity distributed shall be limited to fifty (50) tons per person per year for composted special waste and fifteen (15) tons per person per year for treated special waste.

(2) A final product that exceeds metals concentration limits or exceeds the quantity limitation set forth in subsection (1) of this section shall be disposed or distributed in accordance with the facility's permit or otherwise directed by the cabinet.

Section 11. Processes to Significantly Reduce Pathogens. processes to significantly reduce pathogens shall include one (1) or more of the following:

(1) Aerobic digestion. The process shall be conducted by agitating sludge with air or oxygen to maintain aerobic conditions at residence times ranging from sixty (60) days at fifteen degrees Celsius (15° C) to forty (40) days at twenty degrees Celsius (20° C), with a volatile solids reduction of at least thirty-eight (38) percent.

(2) Air drying. Liquid sludge shall be allowed to drain or dry on under-drained sand beds, or paved or unpaved basins in which the sludge shall be at a depth of nine (9) inches. Air drying shall be conducted for a minimum of three (3) months, with two (2) months of temperatures which average on a daily basis above zero degrees Celsius (0° C).

(3) Anaerobic digestion. The process shall be conducted in the absence of air at residence times ranging from sixty (60) days at twenty degrees Celsius (20° C) to fifteen (15) days at thirty-five degrees Celsius (35° C) to fifty-five degrees Celsius (55° C), with a volatile solids reduction of at least thirty-eight (38) percent.

(4) Composting. Using the within-vessel, static aerated pile or windrow composting methods, the special waste shall be maintained at minimum operating conditions of forty degrees Celsius (40° C) for five (5) days. For four (4) hours during this period, the temperature shall exceed fifty-five degrees Celsius (55° C).

(5) Lime stabilization. Sufficient lime shall be added to produce a pH of twelve (12) for two (2) hours of contact time.

(6) Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.

Section 12. Processes to Further Reduce Pathogens. Processes to further reduce pathogens shall include one (1) or more of the following:

(1)(a) Composting.

1. Using the within-vessel composting method, the waste shall be maintained at operating conditions of fifty-five degrees Celsius (55° C) or greater for three (3) days.

2. Using the static aerated pile composting method, the waste shall be maintained at operating conditions of fifty-five degrees Celsius (55° C) or greater for three (3) days.

3. Using the windrow composting method, the waste shall attain a temperature of fifty-five degrees Celsius (55° C) or greater for at least fifteen (15) days during the composting period. Also, during the high temperature period, there shall be a minimum of five (5) turnings of the windrow.

(b) Heat drying. Dewatered sludge cake shall be dried by contact with hot gases, and moisture content shall be reduced to ten (10) percent or lower. Sludge particles shall reach temperatures in excess of eighty degrees Celsius (80° C), or the wet bulb temperature of the gas stream in contact with the sludge at the point when it leaves the dryer shall be in excess of eighty degrees Celsius (80° C).

(c) Heat treatment. Liquid sludge shall be heated to 180 degrees Celsius (180°C) for thirty (30) minutes.

(d) Thermophilic aerobic digestion. Liquid sludge shall be agitated with air or oxygen to maintain aerobic conditions at residence times of ten (10) days at fifty-five to sixty degrees Celsius (55° - 60° C), with a volatile solids reduction of at least thirty-eight (38) percent.

(e) Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the methods in paragraphs (a) to (d) of this subsection.

(2) Any of the processes described in paragraphs (a) to (d) of this subsection, if added to the processes described in Section 11 of this regulation, further reduce pathogens. Because the processes listed in paragraphs (a) to (d) of this subsection, on their own, do not reduce the attraction of disease vectors, they are only add-on in nature:

(a) Beta ray irradiation. Sludge shall be irradiated with beta rays from an accelerator at dosages of at least one (1.0) megarad at room temperature, approximately twenty degrees Celsius (20° C).

(b) Gamma ray irradiation. Sludge shall be irradiated with gamma rays from certain isotopes, such as Cobalt-60 and Cesium-137, at dosages of at least one (1.0) megarad at room temperature, approximately twenty degrees Celsius (20° C).

(c) Pasteurization. Sludge shall be maintained for at least thirty (30) minutes at a minimum temperature of seventy degrees Celsius (70° C).

(d) Other methods. Other methods or operating conditions may be acceptable if pathogens are reduced to an extent equivalent to the reduction achieved by any of the methods described in paragraphs (a) to (c) of this subsection.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 13, 1992
FILED WITH LRC: May 14, 1992 at 1 p.m.

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

401 KAR 45:135. Requirements for emergency and research, development, and demonstration permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 24.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes standards applicable to all special waste sites or facilities. This regulation sets forth the requirements for an emergency permit and a research, development, and demonstration permit.

Section 1. Emergency Permit. (1) The cabinet may issue an emergency permit that allows for the disposal or temporary storage of special waste in response to a situation that poses an imminent and substantial threat to human health or the environment. However, an emergency permit shall only be issued when the circumstances preclude the processing of a permit of appropriate classification, and

the permitted site would not create an endangerment to human health or the environment.

(2) An emergency permit:

(a) Shall be oral or written. If oral, it shall be followed in five (5) days by a written emergency permit request;

(b) Shall not exceed ninety (90) days in duration;

(c) Shall clearly specify the special wastes to be received, and the manner and location of treatment, storage, or disposal;

(d) May be unilaterally terminated by the cabinet at any time if the cabinet determines that termination is appropriate to protect human health or the environment;

(e) Shall incorporate to the extent possible, and not inconsistent with the emergency situation, all applicable requirements of this chapter and 401 KAR 30:031;

(f) Shall specify that all remaining special waste is to be removed at the end of the term of the emergency permit to a properly permitted special waste site or facility in order to be exempted from closure and financial requirements of this chapter; and

(g) Shall specify that failure to comply with the conditions of the emergency permit shall be grounds for the cabinet to take any appropriate enforcement action including an action to recover the cost of proper closure.

Section 2. Research, Development, and Demonstration Permits. (1) The cabinet may issue a research, development, and demonstration permit for any special waste treatment or disposal site or facility that proposes to utilize an innovative and experimental special waste technology or process for which permit standards for such experimental activity have not been promulgated under this chapter. The permit shall include terms and conditions that will assure protection of human health and the environment. In issuing research, development, and demonstration permits, the cabinet shall:

(a) Provide standards for the construction of the facility, and authorize operation of the facility for not longer than two (2) years, unless the permit is renewed as provided in subsection (4) of this section;

(b) Provide authorization for the receipt, storage, and disposal by the facility of only those types and quantities of special waste that the cabinet deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of the technology or process on human health and the environment; and

(c) Include requirements necessary to protect human health and the environment including, but not limited to: monitoring, operation, financial responsibility, closure, corrective action, testing, and reporting.

(2) The processing of a research, development, and demonstration permit shall be accomplished on a case-by-case basis. The cabinet may, consistent with the protection of human health and the environment, modify or waive permit issuance requirements in this chapter except there shall be no modification or waiver of the requirement to post financial assurance in accordance with 401 KAR 45:080 or the provisions of 401 KAR 45:050 regarding public notification.

(3) The cabinet may order an immediate termination of all operations at the site or facility at any time it is determined that termination is necessary to protect human health or the environment.

(4) Permits issued under this Section may be renewed one (1) time for a period not to exceed two (2) years.

(5) Persons applying for a new or renewal of a research, development, and demonstration permit shall use form DEP 7094B entitled "Application For A Research, Development, and Demonstration Permit" (March 1992). The requirements contained in the research, development, and demonstration permit application are incorporated in this regulation by reference. The cabinet may require that additional information be included in the application to ensure the protection of human health and the environment. The application may be obtained from the Division of Waste Management, **14** ~~[18]~~ Reilly Road, Frankfort, KY 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(6) The cabinet, in issuing a research, development and demonstration permit, shall prepare as a permit condition a list of statutes and regulations with which the owner or operator of the facility is required to comply. The cabinet shall determine the groundwater monitoring, closure, postclosure, financial assurance obligations, and reporting requirements of the owner or operator and shall list them as a permit condition.

(7) The owner or operator of a research, development, and demonstration site or facility shall submit a renewal application at least 180 days prior to the expiration of the initial permit.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 13, 1992
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 45:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99, 40 CFR 302.4, Appendix A

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760, 40 CFR 302.4

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the treatment, management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth the standards for groundwater and surface water monitoring and corrective action at special waste sites or facilities.

Section 1. Applicability. The requirements of this regulation apply to owners and operators of special waste landfills, Type A special waste landfarming or composting sites or facilities, other special waste sites or facilities at which the cabinet determines groundwater and surface water monitoring shall be required, and special waste sites or facilities required to perform corrective action as a result of documented groundwater contamination. Landfarming and composting sites or facilities required to monitor surface water shall comply with Section 6(26) of 401 KAR 45:100. Landfarming and composting sites or facilities required to perform corrective action shall comply with Section 5 of this regulation. The owner or operator shall satisfy the requirements of this regulation for all wastes and waste constituents contained in the site or facility. The cabinet may waive baseline groundwater characterization and groundwater monitoring, subject to the provisions of 401 KAR 30:020.

Section 2. Design Requirements for Groundwater Monitoring Systems. The groundwater quality monitoring system to be utilized in the groundwater monitoring plan shall accurately analyze groundwater quality and characterize regional and local groundwater flow and flow systems. The monitoring system shall consist at a minimum, of the following:

(1) At least one (1) background well at a point hydraulically upgradient from the disposal area in the direction of increasing static

head that is capable of providing data representative of groundwater not affected by the special waste site or facility. When the special waste site or facility occupies the most upgradient position in the flow system or the upgradient area is not representative, sufficient downgradient or side gradient monitoring wells shall be placed to accurately characterize the groundwater quality and regional and local groundwater flow systems. Background wells shall be located so that they will not be affected by groundwater contamination from the disposal area; and

(2) At least two (2) monitoring wells at points hydraulically downgradient in the direction of decreasing static head from the area in which special waste has been or will be disposed. The cabinet may allow springs for monitoring points if the springs are hydraulically downgradient from the area in which special waste has been or will be disposed, if the springs are developed and protected in a manner approved by the cabinet, and if the springs are capable of detecting any contamination from the disposal facility. Downgradient monitoring wells shall be located so that they will provide early detection of groundwater contamination and progressive monitoring of the phases and units of the site or facility.

(3) An alternative monitoring plan may be proposed in an application for a special waste site or facility in accordance with Section 3(2) of 401 KAR 45:110.

Section 3. Requirements for Monitoring Well Construction. (1) Precautions shall be taken during drilling and construction of monitoring wells to avoid introducing contaminants into the borehole. Only potable water shall be used in drilling monitoring wells, unless otherwise approved by the cabinet. Drilling muds shall not be used except with prior approval of the cabinet. Air systems and drilling lubricants shall not introduce contaminants into the boreholes.

(2) Decontamination of all equipment to be placed into the boring shall be performed before use at the site and between boreholes. Where possible, upgradient wells shall be drilled first.

(3) Monitoring wells shall be cased as follows:

(a) In a manner to ensure the integrity of the monitoring well borehole by isolating water bearing units which are sampled by each well;

(b) With a minimum casing diameter of four (4) inches, unless otherwise approved by the cabinet in writing;

(c) With screens and appropriate gravel or sand where necessary, to enable collection of samples at depths where appropriate aquifer flow zones exist;

(d) To allow the casing to protrude at least one (1) foot above ground;

(e) To provide a drill hole diameter that is a minimum of four (4) inches larger than the outside diameter of the well casing;

(f) To produce an annular space above the sampling depth that is sealed to prevent contamination of samples and the groundwater; and

(g) If plastic casing is used, it shall be threaded and gasket sealed to preclude potential sample contamination from solvent welded joints, unless otherwise provided by the cabinet in the permit.

(4) Monitoring well casings shall be enclosed in a protective cover that shall:

(a) Be of sufficient strength to protect the well from damage by heavy equipment and vandalism, and also include protective barrier steel posts at the corners of the concrete pad;

(b) Be installed into firm rock, unless otherwise approved by the cabinet;

(c) Be grouted and placed with a cement collar below the frost line to hold it firmly in position, unless otherwise approved by the cabinet;

(d) Be numbered and painted in a highly visible color;

(e) Protrude at least one (1) inch higher above grade than the monitoring well casing;

(f) Have a locking cap; and

(g) Be made of steel or any other material of equivalent strength.

(5) Each monitoring well shall have a concrete pad extending two (2) feet around the well and sloped away from the well.

Section 4. Sampling and Analysis. (1) Parameters listing. Owners or operators of special waste sites or facilities that require groundwater monitoring shall conduct sampling and analysis from each monitoring well for the parameters listed in Section 8 of this regulation.

(2) Reporting of analysis results. Analyses of data required by this section shall be submitted to the cabinet on a form provided by the cabinet within sixty (60) days of sampling or fifteen (15) days after completion of analyses, whichever is sooner, unless the cabinet approves another time period in the permit. Frequency of sampling shall be as indicated in Section 8 of this regulation.

(3) If analysis of the sample results indicates contamination, the owner or operator shall notify the cabinet within forty-eight (48) hours of receiving the analysis results and shall arrange for the cabinet to split a sample no later than ten (10) days from the receipt of the results.

Section 5. Groundwater Contamination Assessment and Corrective Action. (1) The owner or operator of a special waste site or facility shall prepare and submit a groundwater assessment plan if laboratory analyses of one (1) or more public or private water supplies or monitoring wells at the site or facility shows the presence of one (1) or more parameters listed in 40 CFR 302.4 Appendix A as of September 1991, above the maximum contaminant level (MCL) as specified in 401 KAR 30:031 or significant increase over established background levels for parameters that have no MCL. For parameters that have no maximum contaminant levels, a significant increase over background shall be determined using a statistical test as specified in Section 6 of this regulation.

(2) Confirmation sampling. The owner or operator of a special waste site or facility shall not be required to submit a groundwater assessment plan if the following conditions are met:

(a) Within ten (10) days after receipt of sample results showing groundwater contamination the owner or operator resamples the affected wells; and

(b) Analysis from resampling shows to the cabinet's satisfaction that groundwater contamination has not occurred.

(3) The owner or operator of a special waste site or facility shall be required to provide alternate water supplies to affected parties within twenty-four (24) hours of notification of the cabinet that sample results indicate contamination of a drinking water supply if it has been determined that the special waste site or facility is the probable source of contamination.

(4) The groundwater assessment plan shall be submitted to the cabinet within thirty (30) days of the occurrence of the conditions described in subsection (1) of this section. The assessment plan shall specify the manner in which the owner or operator will determine the existence, quality, quantity, areal extent, and depth of groundwater degradation, and the rate and direction of migration of contaminants in the groundwater. The assessment plan shall be prepared by a qualified professional in the field of hydrogeology and shall be implemented upon approval by the cabinet in accordance with the approved implementation schedule. The assessment plan shall be implemented within sixty (60) days after approval by the cabinet. The plan shall contain, at a minimum, the following information:

(a) The number, location, size, casing type and depth of wells, lysimeters, borings, pits, piezometers, and other assessment structures or devices to be used;

(b) Sampling and analytical methods for the parameters to be evaluated;

(c) Analyses of all parameters listed in the approved monitoring plan in the permit application, and any other parameter required by the cabinet; and

(d) Evaluation procedures, including the use of previously gathered groundwater quality information, to determine the concentration, rate, and extent of groundwater degradation or pollution from the facility.

(5) For public or private water supplies that may be adversely affected by the facility, the owner or operator shall submit a detailed hydrogeologic study addressing the potential effect of the site or facility on the water supply.

(6) If the cabinet determines that the assessment plan is inadequate, the cabinet may modify the plan and approve the plan as modified.

(7) Within ninety (90) days after the implementation of the groundwater assessment plan, the owner or operator shall submit a groundwater assessment report containing the new data collected, analysis of the data, and recommendations on the necessity for abatement.

(8) The cabinet may require abatement measures prior to approval of the groundwater assessment plan.

(9) Within ninety (90) days of cabinet approval of the groundwater assessment report, but no later than one (1) year from the event specified in subsection (1) of this section, the owner or operator shall submit a remedial action plan to include the following:

(a) The specific methods or techniques to be used to abate groundwater contamination from the facility;

(b) The specific methods or techniques to be used to prevent further groundwater contamination from the facility; and

(c) A description of the means used to restore or replace public or private water supplies affected by contamination from the special waste facility.

(10) The owner or operator of a special waste site or facility shall take any other steps deemed necessary by the cabinet to ensure protection of human health and the environment.

(11) Corrective action measures under this regulation shall be initiated and completed within a period of time as specified by the cabinet considering the extent of degradation determined pursuant to subsection (1) of this section.

(12) Corrective action measures under this regulation may be terminated upon approval of the cabinet when the owner or operator demonstrates that concentrations have been reduced to levels below the maximum contaminant level or naturally occurring background.

Section 6. Statistical Methods for Groundwater Analysis. The owner or operator of a special waste site or facility shall use the following statistical procedure in determining whether background values or concentration limits have been significantly exceeded:

(1) If the level of a parameter is to be compared to the parameter's background value and that background value has a sample coefficient of variation less than one (1.00):

(a) The owner or operator shall take at least four (4) portions from a sample at each well and determine whether the difference between the mean of the parameter at each well, using all portions taken, and the background value for the parameter is significant at the 0.05 level using the Cochran's Approximation to the Behrens-Fisher Students' t-test. If the test indicates that the difference is significant, the owner or operator shall repeat the same procedures, with at least the same number of portions as used in the first test, with fresh samples from the monitoring wells. If this second round of analyses indicates that the difference is significant, the owner or operator shall conclude that a statistically significant change has occurred; or

(b) With prior approval from the cabinet, the owner or operator may use an equivalent statistical procedure for determining whether a statistically significant change has occurred. The cabinet shall approve such a procedure in the permit if it is found that the alternative procedure reasonably balances the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility in a manner that is comparable to that of the statistical procedure described in paragraph (a) of this subsection.

(2) In all other situations, the owner or operator shall use a statistical procedure approved in the permit which provides reasonable confidence that the migration of contamination from a special waste site or facility into and through the groundwater will be indicated. The cabinet shall approve a statistical procedure in the permit that:

(a) Is appropriate for the distribution of the data used to establish background values or concentration limits; and

(b) Provides a reasonable balance between the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility.

Section 7. Baseline Groundwater Quality Characterization Parameters. For special waste sites or facilities that require groundwater monitoring, the following parameters are to be analyzed and the resulting data submitted in the permit application:

(1) For all landfarming or composting sites or facilities required to monitor groundwater, the characterization shall be based on the following dissolved metals and other parameters:

(a) Specific conductance
Chemical oxygen demand
Total organic carbon
Chloride
Iron
Manganese
Sodium
Total nitrogen
Nitrate nitrogen
Chromium
Cadmium
Coliform bacteria
pH
Calcium
Magnesium
Potassium
Sulfate
Bicarbonate
Carbonate

(b) Groundwater elevation in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(2) For special waste landfills, used solely for the disposal of coal combustion by-products, the characterization shall be based on the following dissolved metals and other parameters:

(a) Chloride
Chemical oxygen demand
Total dissolved solids
Total organic carbon
Specific conductance
pH
Copper
Nickel
Zinc
Iron
Sodium
Arsenic
Cadmium
Lead
Mercury
Selenium
Calcium
Magnesium
Potassium
Sulfate
Bicarbonate
Carbonate

(b) Groundwater elevations recorded as a distance from the

elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(3) For special waste sites or facilities other than those specified in subsections (1) and (2) of this section, the characterization shall be for parameters determined by the cabinet based on a review of the chemical analysis of the waste provided in the application.

Section 8. Groundwater Monitoring Parameters. (1) Owners or operators of landfarming or composting sites or facilities requiring groundwater monitoring shall monitor for the following parameters on a semiannual basis:

(a) Chemical oxygen demand
Total organic carbon
Total nitrogen
Nitrate nitrogen
Lead
Chromium
Cadmium
Coliform bacteria

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum; and

(c) Monitoring of additional parameters may be required by the cabinet based on the waste analysis.

(2) Owners or operators of special waste landfills **used solely for the disposal of coal combustion by-products** shall monitor semiannually for the following:

(a) Chloride
Chemical oxygen demand
Total dissolved solids
Total organic carbon
Specific conductance
pH
Copper [~~Temperature~~]

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum.

(c) Monitoring of additional parameters may be required by the cabinet based on a significant increase from the baseline characterization.

(d) If, after four (4) initial monitoring events, analysis for the parameters in paragraphs (a) to (c) of this subsection indicates no exceedances above levels specified in Section 5(1) of this regulation, the owner or operator may, upon request, be granted permission from the cabinet to reduce the monitoring parameters to those listed in paragraph (a) of this subsection.

(3) Owners or operators of special waste sites or facilities other than **those referenced in subsections (1) and (2) of this section** [~~special waste landfills~~] shall monitor quarterly for parameters to be determined by the cabinet based upon chemical analysis of the waste to be disposed.

Section 9. Surface Water Monitoring and Corrective Action. (1) Special waste sites or facilities required to monitor surface water shall do so in accordance with a plan provided in the permit application. The plan shall be sufficient to characterize the quality of surface water unaffected by the site or facility and to determine if water leaving the site or facility has been contaminated.

(a) Baseline sampling shall include a minimum of two (2) samples collected at no less than thirty (30) day intervals and shall be sufficient to characterize baseline conditions.

(b) Operational surface water monitoring shall be completed in accordance with the surface water monitoring plan approved in the permit application and shall be sufficient to determine if the site or facility is contaminating surface water.

(2) Corrective action shall be completed by a special waste site or facility owner or operator as necessary to comply with 401 KAR 30:031.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 13, 1992
FILED WITH LRC: May 14, 1992 at 1 p.m.

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

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1267

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) This regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and

(c) Mining and reclamation plan information.

[~~(4)(a) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:~~]

[~~1. Preliminary Application, SMP-03, revised August 3, 1984;~~]

[~~2. Application for a Comprehensive Mining and Reclamation Permit, SMP-01-R, November, 1985;~~]

[~~3. Application for Mining Permit Revision, SMP-02-REV, December, 1987;~~]

[~~4. Application for Renewal of a Comprehensive Mining and Reclamation Permit, SMP-01-N1, September, 1987;~~]

[~~5. Application for Coal Marketing Reclamation Deferment, SMP-09, October, 1984;~~]

[~~6. Notification of Operator Change, SMP-11, August, 1990;~~]

[~~7. Notification of Change in Corporate Permittee and/or Corporate Name, SMP-10, December, 1987; and~~]

[~~8. Application for Transfer, Assignment or Sale of Permit Rights, SMP-08, October, 1982.~~]

[~~(b) The forms incorporated by reference in paragraph (a) of this subsection may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30~~

~~p.m.~~]

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security Number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security Number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant [~~under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, as applicable~~]:

(a) The person's name, address, Social Security Number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant [~~under the definition of "owned or controlled" and "owns and controls" in 405 KAR 7:020~~], the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the property to be mined [~~(see the definition of "property to be mined" in 405 KAR 7:020)~~];

(b) The holders of record of any leasehold interest in the property to be mined; and

(c) Any purchaser of record, under a real estate contract, of the property to be mined.

[~~(6) A statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application and by any person identified in subsection (3)(c) of this section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.~~]

(6) [~~(7)~~] The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) [~~(8)~~] The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) [~~(9)~~] Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) [~~(10)~~] A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) [~~(11)~~] After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. **After the permittee's refusal or failure to timely submit the information to the cabinet upon request,** the cabinet may suspend **the permit** [~~permits~~] pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

[~~(12) The applicant shall submit the information required by this section and Section 3 of this regulation on the appropriate forms, incorporated by reference in Section 1(4) of this regulation.~~]

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or [~~,~~] any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated

cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator [~~as defined in KRS 350.450(4)(d),~~] the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If [~~Where~~] the private mineral estate to be mined has been severed from the private surface estate, the application shall contain: [~~also provide for lands within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.~~]

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known

archaeological sights within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the area and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers.

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure

adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Ground Water Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other beneficial use.

(2) If contamination, diminution, or interruption of a surface or groundwater source may result, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with the "Corps of Engineers Wetlands Delineation Manual", U.S. Army Corps of Engineers, (January, 1987), as modified by U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7 (September 26, 1990). The modifications to this material include replacement of Sections 1 and 2 of Appendix C with the "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", Fish and Wildlife Service, U.S. Department of the Interior (May, 1988); and, in Appendix D, Section 2, use of the "List of Hydric Soils of the United States, All Kentucky Counties", Soil Conservation Service (SCS), U.S. Department of Agriculture (December, 1991). This document, and related material, is incorporated by reference. It may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4650. It may also be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5) ~~[This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992, and shall apply to these applications for amendments and revisions as follows:]~~

(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis. ~~[Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring a study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.]~~

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If ~~[When]~~ a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If ~~[When]~~ a soil survey for lands within the proposed permit area contains no soil map units which have been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The

narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for this [~~such~~] data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining

procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC 7401 et seq.), the Clean Water Act (33 USC 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and

sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP: Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16

of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 16:100.

(b) Each plan shall, at a minimum, comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is to be twenty (20) feet or higher or is to impound more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4) [~~This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992, and shall apply to these applications for amendments and revisions as follows:~~]

(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis. [~~Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring a plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.~~]

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans; [~~. This description shall explain:~~]

(b) A discussion of [~~(a)~~] how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including but not necessarily limited to management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If [~~(b) Where~~] a land use different from the premining land use is proposed, all supporting documentation required [~~submitted~~] for approval of the proposed alternative use under 405 KAR 16:210;

(d) A discussion of [~~(c)~~] the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

[~~(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.~~]

(e) [~~(2) The description shall be accompanied by~~] A copy of the comments concerning the proposed use from [~~by~~] the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) [~~(3)~~] Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

[~~Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a public roads transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the surface coal mining operation.~~]

[~~(1) The plan shall specify the legal weight limits for each portion of any public road or bridge over which the applicant proposes to transport coal.~~]

[~~(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to KRS 189.271 to exceed the weight limits on any road or bridge.~~]

[~~(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on the roads and bridges.~~]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 15, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

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

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.151, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917,

40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1266, 1267

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for underground mining activities. This regulation recognizes the distinct differences between surface mining activities and underground mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) Applicability.

(a) This regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;

2. Environmental resources information; and

3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this regulation.

~~[(3)(a) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:]~~

~~[1. Preliminary Application, SMP-03, revised August 3, 1984;]~~

~~[2. Application for a Comprehensive Mining and Reclamation Permit, SMP-01-R, November, 1985;]~~

~~[3. Application for Mining Permit Revision, SMP-02-REV, December, 1987;]~~

~~[4. Application for Renewal of a Comprehensive Mining and Reclamation Permit, SMP-01-N1, September, 1987;]~~

~~[5. Application for Coal Marketing Reclamation Deferment, SMP-09, October, 1984;]~~

~~[6. Notification of Operator Change, SMP-11, August, 1990;]~~

~~[7. Notification of Change in Corporate Permittee and/or Corporate Name, SMP-10, December, 1987; and]~~

~~[8. Application for Transfer, Assignment or Sale of Permit Rights, SMP-08, October, 1982.]~~

~~[(b) The forms incorporated by reference in paragraph (a) of this subsection may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security Number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security Number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant [~~under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, as applicable~~]:

(a) The person's name, address, Social Security Number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant [~~under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020~~], the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(b) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined; and

(c) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined.

~~[(6) A statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application, and by any person identified in subsection (3)(c) of this section and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.]~~

(6) [~~(7)~~] The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) [~~(8)~~] The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) [~~(9)~~] Proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) [~~(10)~~] A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) [~~(11)~~] After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that

occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. **After the permittee's refusal or failure to timely submit the information to the cabinet upon request,** the cabinet may suspend **the permit** [~~permits~~] pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

[~~(12) The applicant shall submit the information required by this section and Section 3 of this regulation on the appropriate forms, incorporated by reference in Section 1(3) of this regulation.~~]

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or [~~,~~] any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator [~~as defined in KRS 350.450(4)(d),~~] the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall contain [~~also provide~~], for lands to be affected by those operations within the permit area: [~~, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.~~]

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under 405 KAR Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct or locate surface

operations or facilities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying the underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall

include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and the aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The applica-

tion shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If contamination, diminution, or interruption of an underground or surface source of water (for domestic, agricultural, industrial, or other legitimate use) within the proposed permit area or adjacent area may result from underground mining activities, then the applicant may identify, in the permit application, the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the **area of surface operations and facilities** [~~permit area~~] and adjacent area**, and areas subject to probable impacts from underground workings, including areas of probable subsidence**. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the **area of surface operations and facilities** [~~permit area~~] or adjacent area**, or areas subject to probable impacts from underground workings, including areas of probable subsidence, are** [~~is~~] likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with the "Corps of Engineers Wetlands Delineation Manual", U.S. Army Corps of Engineers, (January, 1987), as modified by U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7 (September 26, 1990). The modifications to this material include replacement of Sections 1 and 2 of Appendix C with the "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", Fish and Wildlife Service, U.S. Department of the Interior (May, 1988); and, in Appendix D, Section 2, use of the "List of Hydric Soils of the United States, All Kentucky Counties", Soil Conservation Service (SCS), U.S. Department of Agriculture (December, 1991). This document, and related material, is incorporated by reference. It may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4650. It may also be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5) [~~This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992, and shall apply to those applications for amendments and revisions as follows:~~]

(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which

the **area of surface operations and facilities** [~~permit area~~] or adjacent area**, or areas subject to probable impacts from underground workings, including areas of probable subsidence,** include[~~s~~] an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR **18.060** [~~16:060~~], Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new **areas of surface operations and facilities** [~~permit~~] or adjacent areas**, or areas subject to probable impacts from underground workings, including areas of probable subsidence,** likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis. [~~Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring a study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.~~]

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey.

(a) If [~~When~~] a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If [~~When~~] a soil survey as required by this section contains no soil map units which have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for this [~~such~~] data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 of this regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and each disposal area for underground development

waste and excess spoil, in accordance with Section 28 of this regulation;

11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC 7401 et seq.), the Clean Water Act (33 USC 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of 405 KAR Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of the structures or renewable resource lands.

(2) If the survey shows that no structures or renewable resource lands exist, or no material damage or diminution could be caused in the event of mine subsidence, and if the cabinet agrees with this conclusion, no further information need be provided in the application under this section.

(3) If the survey shows that structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the cabinet determines that damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including measures such as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface, including measures such as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features,

including approximate land-surface contours, to premining condition;

2. Replacement of structures destroyed by subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;

4. Purchase of noncancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including measures such as:

1. The results of presubsidence surveys of all structures and surface features which might be materially damaged by subsidence;

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2; and

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9, and 405 KAR 18:080.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.

(b) Each plan shall, at a minimum, comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is to be twenty (20) feet or higher or is to impound more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive

dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4) ~~[This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992, and shall apply to those applications for amendments and revisions as follows:]~~

(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the **area of surface operations and facilities** ~~[permit area]~~ or adjacent area**, or areas subject to probable impacts from underground workings, including areas of probable subsidence,** include~~[s]~~ an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR **18:060** ~~[16:060]~~, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new **areas of surface operations and facilities** ~~[permit]~~ or adjacent areas**, or areas subject to probable impacts from underground workings, including areas of probable subsidence,** likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis. ~~[Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring a plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.]~~

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses ~~[,]~~ following reclamation of the land to be affected within the proposed permit area by surface operations and ~~[or]~~ facilities, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans; ~~[. This description shall explain:]~~

(b) A discussion of ~~[(a)]~~ how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including but not necessarily limited to management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If ~~[(b) Where]~~ a land use different from the premining land use is proposed, all supporting documentation required ~~[submitted]~~ for approval of the proposed alternative use under 405 KAR 18:220;

(d) A discussion of ~~[(c)]~~ The consideration which has been given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

~~[(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.]~~

(e) ~~[(2) The description shall be accompanied by]~~ A copy of the comments concerning the proposed use from the legal or equitable owner of record of the area ~~[surface areas]~~ to be affected by surface operations and ~~[or]~~ facilities ~~[within the proposed permit area]~~ and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) ~~[(3)]~~ Approval of the initial postmining land use plan pursuant to this section shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

~~[Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining activities.]~~

~~[(1) The plan shall specify the legal weight limits for each portion of any public road or bridge over which the applicant proposes to transport coal.]~~

~~[(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to KRS 189.271 to exceed the weight limits on any road or bridge.]~~

~~[(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on the roads and bridges.]~~

Section 38. ~~[39.]~~ MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations,

and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 15, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

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

405 KAR 16:180. Protection of fish, wildlife, and related environmental values.

RELATES TO: KRS 350.020, 350.028, 350.405, 350.435, 350.465, 30 CFR Parts 730-733, 735, 816.57, 816.97, 917, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1265, 33 USC 1344

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.57, 816.97, 917, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1265, 33 USC 1344

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities, and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values, and for the enhancement of those [~~such~~] resources where practicable.

Section 1. General. [~~Protection of Fish, Wildlife, and Related Environmental Values.~~] (1) The [~~Any~~] permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts [~~of the activities~~] on fish, wildlife, and related environmental values, and shall achieve enhancement of those [~~such~~] resources where practicable.

(2) Each permittee shall:

(a) To the extent possible using the best technology currently available:

1. Ensure that electric powerlines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the cabinet determines that these requirements are unnecessary;

2. Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law;

3. Design fences, overland conveyors, and other potential barriers to permit passage of large mammals, except where the cabinet determines that the designs are unnecessary; and

4. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(b) Avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes; and

(c) Avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

[~~(3) This section shall apply to operations under permit applications that were subject to 405 KAR 8:030, Sections 20 and 36.~~]

Section 2. Protection of Endangered and Threatened Species. (1)(a) No surface mining activity shall be conducted which is likely to jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior or which is likely to result in the destruction or adverse modification of a designated critical habitat of those species in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.). The **operator** [~~permittee~~] shall promptly report to the cabinet any state- or federally-listed endangered or threatened species within the permit area of which the **operator** [~~permittee~~] becomes aware. Upon notification, the cabinet shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the **operator** [~~permittee~~] may proceed.

(b) No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The **operator** [~~permittee~~] shall promptly report to the cabinet any golden or bald eagle nest within the permit area of which the **operator** [~~permittee~~] becomes aware. Upon notification, the cabinet shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the Kentucky Department of Fish and Wildlife Resources and, after consultation, shall identify whether, and under what conditions, the **operator** [~~permittee~~] may proceed.

(2) Nothing in this title shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 as amended (16 USC 1531 et seq.) or the Bald Eagle Protection Act as amended (16 USC 668 et seq.).

[~~(2) A permittee shall promptly report to the cabinet the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the cabinet by that person.~~]

[~~(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the cabinet. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, "Powerline Contacts by Eagles and Other Large Birds," or in alternative guidance manuals approved by the cabinet.~~]

[~~(4) Each permittee shall, to the extent possible using the best technology currently available:~~]

[~~(a) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;~~]

[~~(b) Fence roadways where specified by the cabinet to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migration routes;~~]

[~~(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;~~]

[~~(d) Restore, enhance where practicable or avoid disturbance to habitats of unusually high value for fish and wildlife;~~]

[~~(e) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas. Wetlands shall be preserved or created, rather than drained or otherwise permanently abolished;~~]

[(f) Afford protection to aquatic communities by avoiding stream channels as required in 405 KAR 16:060, Section 11 or restoring stream channels as required in 405 KAR 16:080, Section 2;]

[(g) Not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the cabinet;]

[(h) To the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the cabinet as part of a management plan.]

Section 3. Reclamation Strategies and Wildlife Enhancement Techniques. (1) Where [(i) If] fish and wildlife [habitat] is to be a [primary or secondary] postmining land use, the permittee [operator] shall[, in addition to the requirements of 405 KAR 16:200]:

(a) [1.] Select plant species to be used on reclaimed areas[, based] on the basis of the following criteria: their proven nutritional value for fish or [and] wildlife; their use[s] as cover for fish or [and] wildlife; and their ability to support and enhance fish or [and] wildlife habitat after release of performance bonds; and

(b) Group and distribute plants [2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed] in a manner which optimizes edge effect, cover, and other benefits to [for] fish and wildlife.

(2) [(j)] Where cropland is to be the [alternative] postmining land use, [on lands diverted from a fish and wildlife premining land use] and where appropriate for wildlife- and crop- management practices, the permittee shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. [; and]

(3) [(k)] Where [the primary land use is to be] residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall [land use,] intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife [birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use].

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 15, 1992
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:180. Protection of fish, wildlife, and related environmental values.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.405, 350.435, 350.465, 30 CFR Parts 730-733, 735, 817.57, 817.97, 917, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1266, 33 USC 1344

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.57, 817.97, 917, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1266, 33 USC 1344

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities, and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values, and for the enhancement of those [such] resources where practicable.

Section 1. General. [Protection of Fish, Wildlife, and Related Environmental Values.] (1) The [Any] permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts [of the activities] on fish, wildlife, and related environmental values, and shall achieve enhancement of those [such] resources where practicable.

(2) Each permittee shall:

(a) To the extent possible using the best technology currently available:

1. Ensure that electric powerlines and other transmission facilities used for, or incidental to, underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the cabinet determines that these requirements are unnecessary;

2. Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law;

3. Design fences, overland conveyors, and other potential barriers to permit passage of large mammals, except where the cabinet determines that the designs are unnecessary; and

4. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(b) Avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes; and

(c) Avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

[(3) This section shall apply to operations under permit applications that were subject to 405 KAR 8:040, Sections 20 and 36.]

Section 2. Protection of Endangered and Threatened Species. (1)(a) No underground mining activity shall be conducted which is likely to jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior or which is likely to result in the destruction or adverse modification of a designated critical habitat of those species in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.). The **operator** [permittee] shall promptly report to the cabinet any state- or federally-listed endangered or threatened species within the permit area of which the **operator** [permittee] becomes aware. Upon notification, the cabinet shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the **operator** [permittee] may proceed.

(b) No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The **operator** [permittee] shall promptly report to the cabinet any golden or bald eagle nest within the permit area of which the **operator** [permittee] becomes aware. Upon notification, the cabinet shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the Kentucky Department of Fish and Wildlife Resources and, after consultation, shall identify whether, and under what conditions, the **operator** [permittee] may proceed.

(2) Nothing in this title shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 as amended (16 USC 1531 et seq.) or the Bald Eagle Protection Act as amended (16 USC 668 et seq.).

[(2) A permittee shall promptly report to the cabinet the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered, or any bald or golden eagle, of which that person

~~becomes aware and which was not previously reported to the cabinet by that person.~~]

~~[(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the underground mining activities on the permit area shall be designed and constructed in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the cabinet. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10 "Powerline Contacts by Eagles and Other Large Birds" or in alternative guidance manuals approved by the cabinet.~~]

~~[(4) Each permittee shall to the extent possible using the best technology currently available:~~]

~~[(a) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;~~]

~~[(b) Fence roadways where specified by the cabinet to guide locally important wildlife to roadway underpasses or overpasses and construct the necessary passages. No new barrier shall be located in known and important wildlife migration routes;~~]

~~[(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;~~]

~~[(d) Restore, enhance where practicable, or avoid disturbances to habitats of unusually high value for fish and wildlife;~~]

~~[(e) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas. Wetlands shall be preserved or created, rather than drained or otherwise permanently abolished;~~]

~~[(f) Afford protection to aquatic communities by avoiding stream channels as required in 405 KAR 18:060, Section 9 and 405 KAR 18:210, Section 4 or restoring stream channels as required in 405 KAR 18:080, Section 2;~~]

~~[(g) Not use persistent pesticides on the area during underground mining and reclamation activities unless approved by the cabinet;~~]

~~[(h) To the extent possible prevent, control, and suppress range forest and coal fires which are not approved by the cabinet as part of a management plan;~~]

Section 3. Reclamation Strategies and Wildlife Enhancement Techniques. (1) Where [~~(i) If~~] fish and wildlife [~~habitat~~] is to be a [~~primary or secondary~~] postmining land use, the permittee [~~operator~~] shall[~~, in addition to the requirements of 405 KAR 18:200~~]:

(a) [~~1.~~] Select plant species to be used on reclaimed areas[~~, based~~] on the basis of the following criteria: their proven nutritional value for fish or [~~and~~] wildlife; their use[~~s~~] as cover for fish or [~~and~~] wildlife; and their ability to support and enhance fish or [~~and~~] wildlife habitat after release of performance bonds; and

(b) Group and distribute plants [~~2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed~~] in a manner which optimizes edge effect, cover, and other benefits to [~~for~~] fish and wildlife. [~~;~~]

(2) [~~(j)~~] Where cropland is to be the [~~alternative~~] postmining land use [~~on lands diverted from a fish and wildlife premining land use~~], and where appropriate for wildlife- and crop- management practices, the permittee shall intersperse the fields with trees, hedges or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types of birds and other animals. [~~; and~~]

(3) [~~(k)~~] Where [~~the primary land use is to be~~] residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall [~~land use,~~] intersperse reclaimed lands with greenbelts, utilizing species of grass, shrubs, and trees useful as food and cover for wildlife [~~birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use~~].

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 15, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MAY 15, 1992

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 5:110. Dual enrollment under consortium agreement.

RELATES TO: KRS 164.744(2), 164.753(4), HB 468 (1992 RS), Part I, F. 43, p. 47 [~~164.740 to 164.766~~]

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4), 164.753 (4), HB 468 (1992 RS), Part I, F. 43, p. 47

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers the CAP [~~state student incentive~~] grant program pursuant to KRS 164.740 to 164.766. This regulation sets the conditions for CAP grant eligibility of a student simultaneously enrolled in two (2) or more participating educational institutions. This amendment replaces references to the state student incentive grant program with references to the college access program.

Section 1. For purposes of the CAP [~~state student incentive~~] grant program, a student who is otherwise eligible pursuant to 11 KAR 5:035 [~~5:030~~], except that the student is enrolled simultaneously in two (2) or more educational institutions pursuing an eligible program of study jointly offered by those institutions, is eligible under this section if the program of study is covered by a consortium agreement between the educational institutions and if the student is carrying a combined academic workload at all educational institutions in the consortium equal to full-time enrollment at the primary institution.

Section 2. Consortium Agreement. Two (2) or more educational institutions participating in the CAP [~~KHEAA state student incentive~~] grant program may, for purposes of Section 1 of this regulation, execute a consortium agreement which meets the following terms and conditions:

(1) The agreement shall [~~must~~] be written and signed by authorized representatives of each participating educational institution;

(2) The agreement shall [~~must~~] designate which educational institution will serve as the "primary" institution; and

(3) The agreement shall [~~must~~] specify:

(a) The tuition, fees, room and board cost, and all other costs assessed to the student by each institution; and

(b) That the primary institution will perform the duties set forth in Section 3 of this regulation.

Section 3. Duties of Primary Institution. For purposes of Section 2 of this regulation, the primary institution designated in a consortium agreement shall [~~must~~] assume the following duties and responsibilities:

(1) Counsel students, who are enrolled or accepted for enrollment in programs of study covered by the consortium agreement, concerning student eligibility, rights, and responsibilities under the CAP [~~state student incentive~~] grant program;

(2) Maintain all records, including information from all participating institutions about the student's grades, institutional costs incurred, financial aid received, enrollment, and all other information related to the student's eligibility as is required to be maintained on any other CAP [~~state student incentive~~] grant recipient enrolled only in the primary institution;

(3) Disburse the CAP [~~state student incentive~~] grant;

(4) Confer academic credit to the student for all courses completed at other educational institutions under the consortium agreement as if the courses had been provided by the primary institution;

(5) Monitor the student's enrollment status at all educational institutions in the consortium and indicate the student's enrollment at the primary institution as the equivalent of the combined enrollment at all educational institutions in the consortium;

(6) Calculate any refund or repayment and make any such refund based on the primary institution's refund policy, based upon any change in enrollment at any of the educational institutions in the consortium, as if the student were enrolled only at the primary institution;

(7) Provide to the authority, on behalf of all educational institutions in the consortium, all reports and notifications required by law or regulation as if the student were enrolled only at the primary institution.

Section 4. The consortium agreement may contain any other terms and conditions, not inconsistent with this regulation, as may be deemed necessary or appropriate by the participating educational institutions.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992, at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: There are anticipated to be 22,868 college access program grant awards for the 1992-93 academic year. It is expected that a small percentage of those students will be enrolled simultaneously at more than one participating institution under a consortium agreement. However, the exact number is unknown because this regulation permits several institutions to agree among themselves which institution will serve as the primary institution for enrollment purposes, and such students are not reported separately.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation sets forth criteria for institutions to agree among themselves to permit eligibility of students enrolled on the equivalent of a full-time basis at more than one institution. There are no costs to the recipients imposed by this regulation. However, $12,326,300 is appropriated for CAP awards in the first year of the 1992-94 biennium. The average CAP grant is expected to be $539 per recipient, saving each of the effected recipients that amount of tuition expense.

2. Continuing costs or savings: $12,672,300 is appropriated for CAP awards in the second year of the biennium, and individual awards will be based on the then current tuition rate at public community colleges.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None. This regulation prescribes the same

eligibility criteria whether the student is attending a public, private nonprofit, or proprietary degree granting institution. Accordingly, those qualifying for the grant will incur no new costs by reason of promulgation of this amendment, nor will there be any effect upon competition among participating institutions for student grant recipients.

(b) Reporting and paperwork requirements: None. This amendment merely replaces the references to the State Student Incentive Grant program with references to the CAP grant program, and imposes no new reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None. The administration costs provided by this regulation is transparent to the agency.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None. This amendment imposes no reporting or record retention requirements upon the agency.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation permits eligibility for students enrolled on the equivalent of a full-time basis at more than one institution. Absent this regulation such students would not be treated the same as students pursuing the same number of credit hours at a single institution.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: This regulation provides similar treatment to students under the CAP program as is afforded to recipients of federal student financial assistance under federal regulations.

TIERING: Was tiering applied? No. This regulation prescribes eligibility criteria of general applicability for students seeking college access program grants. Tiering was not applied because participation in this program is voluntary, and all students will be afforded an equal opportunity, within statutory guidelines, to demonstrate financial need and receive CAP grant awards based upon that need.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:120. Application by recipients of AFDC.

RELATES TO: KRS 164.748(4), (8), (14), (16), 164.753(4)(b), 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation sets forth procedures by which recipients of Aid to Families with Dependent Children may apply for KHEAA grant assistance and the award determination procedures for such applicants. This amendment deletes a defined term that is being placed in a separate regulation and corrects a reference to the Cabinet for Human Resources.

Section 1. Definitions. [~~The term "authority" shall have the meaning defined in KRS 164.740.~~] For purposes of this regulation, the term listed below shall have the following meaning: "Parent" means a student's natural or adoptive mother or father, or a legal guardian appointed by a court who is specifically required by the court to use his or her own resources to support the student.

Section 2. The student application prescribed in 11 KAR 5:130 shall be used.

Section 3. To properly complete the KHEAA grant application procedure, each applicant who receives payments for himself[~~/herself~~] or whose parent receives payments on behalf of the applicant under the program known as "Aid to Families with Dependent Children (AFDC)" administered by the Kentucky Cabinet for Human Resources, Bureau for Social Insurance, (CHR, BSI), shall indicate in the designated place on the application that these benefits are received.

Section 4. The authority shall request data from the CHR [~~DHR~~], BSI to verify that the family is a current bona fide recipient of payments under the AFDC program.

Section 5. Each verified applicant receiving AFDC payments for himself[~~/herself~~] or whose parent receives payments for the applicant who meets all of the student eligibility requirements in 11 KAR 5:033 [~~5:030~~], except Section 1 [~~2~~](4), or 11 KAR 5:034, except Section 1(3) will be awarded a KHEAA grant in the maximum amount available to students at the educational institution where the applicant is or will be enrolled for the period covered by the application, so long as funds are available.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992, at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40501.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: It is anticipated that over 79,000 Kentucky students will file the Kentucky Financial Aid Form (KFAF) through the College Scholarship Service to apply for various programs of student financial assistance for the 1992-93 academic year. Based on past experience, it is estimated that 4.7% of those students will apply as AFDC recipients.

(a) Direct and indirect costs or savings to those affected:

1. First year: The minimum cost to students for filing the KFAF and having it processed by the college scholarship program is $9.75, with an additional cost of $2.50 for applying for a KHEAA grant. However, the amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. Accordingly, the amendment does not affect a cost or saving to KHEAA grant applicants.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The amendment does not change the automatic determination of maximum financial need for KHEAA grant applications from AFDC recipients, and, therefore, does not impose any new reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: The amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. Accordingly, the amendment does not affect a cost or saving to the agency.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendment does not change the automatic determination of maximum financial need for KHEAA grant applications by AFDC recipients, and, therefore, does not impose any new reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None. Student fees for application processing are paid directly to the publisher and processor of the KFAF (the college scholarship service), and no portion of the fee is received by the agency.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. This is intended to simplify the regulations in Chapter 5 of Title 11 of the Kentucky Administrative Regulations, and make them more readable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied within the regulation, because all Kentucky students file a single form to apply for federal, state, and institutional financial assistance demonstrating financial need under one system of uniformly applied criteria. Participation in the financial assistance programs is voluntary. Nevertheless, the special treatment afforded AFDC recipients under this entire regulation is itself a form of tiering in comparison to other related regulations. For these reasons, the concept of tiering was not applicable.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2) to 164.753(4) [~~164.740 to 164.764~~], 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation prescribes the form to be used by students to apply for and establish financial need for KHEAA grant programs. This amendment is necessary to reflect the application form for KHEAA [~~state~~] grants for use in 1992-93 [~~1991-92~~] and subsequent years and to delete common definitions now being placed in a separate regulation. The provisions of this regulation substantially duplicate 11 KAR 11:020. Therefore, an amendment to this regulation repeals 11 KAR 11:020. [~~, and to change the provisions for grant availability after a change of educational institutions.~~]

[~~Section 1. Definitions. The terms "authority", "business school", "college", "federal act", "grant", "school of nursing", and "vocational school" shall have the meanings defined in KRS 164.740. For purposes of this regulation, the terms listed below shall have the following meanings:~~

~~(1) "Educational institution" means an institution located in Kentucky which:~~

~~(a) Offers an eligible course of study;~~

~~(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution;~~

~~(c) Has entered into an administrative agreement with the authority; and~~

~~(d) For purposes of the state student incentive grant program, a business school, college, school of nursing or vocational school, as defined in KRS 164.740(3), (4), (17), and (18) respectively and meets the requirements of the federal act; or~~

~~(e) For purposes of the Kentucky tuition grant program, a private, nonprofit college accredited by the Southern Association of Colleges and Schools, Commission on Colleges, and whose institutional programs are not comprised solely of sectarian instruction.~~

~~(2) "Eligible course of study" means a program offered by an educational institution which:~~

~~(a) Is of at least two (2) academic years duration; and~~

~~(b) Leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.~~]

Section 1. [~~2.~~] In order to receive KHEAA grants [~~program benefits~~], the Kentucky Financial Aid Form incorporated herein by reference, for the pertinent academic year, shall be completed and submitted in accordance with the instructions provided by the authority. The application and instructions are available from the authority at its office at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. An applicant shall indicate the choice of an educational institution on the application to be considered for the KHEAA grant. The educational institution listed first shall be used in the determination of a KHEAA grant program award.

Section 2. [~~3.~~] If the student provides written notification of change of first choice educational institution, on or before August 1 or December 1, prior to the commencement of the respective fall or spring semester for which a KHEAA grant is sought, grant program eligibility shall be redetermined and award determination shall be recomputed by the authority based upon the new choice of educational institution. If the student changes his or her choice of educational institution after those dates, any KHEAA grant award for the succeeding academic term shall be revoked, and grant program eligibility shall be recomputed and depend upon the availability of funds.

Section 3. 11 KAR 11:020, Student application, is hereby repealed.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992, at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the

public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40501.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: It is anticipated that over 79,000 Kentucky students will file the Kentucky Financial Aid Form (KFAF) through the College Scholarship Service to apply for various programs of student financial assistance for the 1992-93 academic year. This form has been used for more than 15 years as the information resource for providing financial need analysis for applying for KHEAA grants.

(a) Direct and indirect costs or savings to those affected:

1. First year: The minimum cost to students for filing the KFAF and having it processed by the college scholarship program is $9.75, with an additional cost of $2.50 for applying for a KHEAA grant. However, the amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. Accordingly, the amendment does not affect a cost or saving to KHEAA grant applicants.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The amendment does not change the form used for KHEAA grant applications, and, therefore, does not impose any new reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: The amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. Accordingly, the amendment does not affect a cost or saving to the agency.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendment does not change the form used for KHEAA grant applications, and, therefore, does not impose any new reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None. Student fees for application processing are paid directly to the publisher and processor of the KFAF (the college scholarship service), and no portion of the fee is received by the agency.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. This is intended to simplify the regulations in Chapter 5 of Title 11 of the Kentucky Administrative Regulations, and make them more readable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 11 KAR 11:020, pertaining to the college access program, was promulgated under authority of the 1990-92 biennial budget bill and contains substantially similar provisions related to application for a CAP grant.

(a) Necessity of proposed regulation if in conflict: This amendment encompasses both the college access program and Kentucky tuition grant program for simplicity of administration of the KHEAA grant programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: An amendment to this regulation repeals 11 KAR 11:020.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied, because all Kentucky students file a single form to apply for federal, state, and institutional financial assistance demonstrating financial need under one system of uniformly applied criteria. Participation in the financial assistance programs is voluntary. For these reasons, the concept of tiering was not applicable.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:140. KTG award determination procedure.

RELATES TO: KRS 164.744(2) to 164.753(4) [~~164.740 to 164.764~~], 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers the Kentucky tuition grant program to provide financial assistance to students to attend Kentucky educational institutions. This regulation sets forth the award determination procedures for the Kentucky tuition [~~KHEAA~~] grant program. This amendment is necessary to delete common definitions that are being placed in a separate regulation and delete references to the state student incentive grant program [~~change the maximum state grant award~~].

Section 1. Definitions. [~~The terms "authority" and "grant" shall have the meanings defined in KRS 164.740.~~] For purposes of this regulation, the terms listed below shall have the following meanings:

[~~(1) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty four (24) semester hours, or thirty six (36) quarter hours of instruction.~~

~~(2) "Application date" means the date that the application is processed by the College Scholarship Service.~~

~~(3) "CAP grant" means an award by the authority under the college access program administered pursuant to 11 KAR 11:010, et seq.~~

~~(4) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses and reasonable transportation costs for the academic period of the grant application.~~

~~(5) "Educational institution" means a participating institution located in Kentucky which:~~

~~(a) Offers an eligible course of study;~~

~~(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution;~~

~~(c) Has entered into an administrative agreement with the authority; and~~

~~(d) For purposes of the State Student Incentive Grant Program, a business school, college, school of nursing or vocational school, as defined in KRS 164.740(3), (4), (17), and (18) respectively and meets the requirements of the federal act; or~~

~~(e) For purposes of the Kentucky Tuition Grant Program, a private, nonprofit college accredited by the Southern Association of Colleges and Schools, Commission on Colleges, and whose institutional programs are not comprised solely of sectarian instruction.~~

~~(6) "Eligible course of study" means a program offered by an educational institution which:~~

~~(a) Is of at least two (2) academic years duration; and~~

~~(b) Leads to a degree in a field other than theology, divinity or~~

~~religious education at the institution at which the student is enrolled.~~

~~(7) "Full time student" means a student who is carrying a full time academic workload, other than by correspondence, measured in terms of:~~

~~(a) Course work or other required activities as determined by the institution in which the student is enrolled, including any combination of courses, work experience, research or special studies which the institution requires of the student to consider him as being engaged in full time study, and which amounts to the equivalent of a minimum of twelve (12) semester hours or twelve (12) quarter hours per academic term for institutions utilizing trimesters, semesters or quarter hour systems or which consists of a program requiring the minimum of twenty five (25) clock hours per week for those institutions that do not utilize such systems; and~~

~~(b) The tuition and fees customary for full time study at that institution.~~

~~(8) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the authority's on campus agent to certify all institutional transactions and activities with respect to the KHEAA grant programs.~~

~~(9) "Overaward" means provision through any and all sources of financial assistance to meet educational expenses in excess of a student's need.~~]

[~~(10)~~] "Pell grant" means an award under the Pell Grant Program operated by the secretary [~~United States Government~~] under the provisions of Title IV Part A, subpart 1 of the federal act [~~20 USC 1070a~~].

[~~(11) "Total cost of education" or "TCE" for an academic year means an amount determined for each applicant by the following formula: normal tuition and fees for a full time student at the institution chosen by the applicant plus maximum board contract amount plus minimum room contract amount.~~]

[~~Section 2. State Student Incentive Grant (SSIG) Program Awards. Each application shall be reviewed for determination that all eligibility requirements set forth in 11 KAR 5:030 for SSIG are met. To qualify for an SSIG award based on financial need, the applicant's family contribution using Congressional methodology, prescribed in Title IV, Part F of the federal act (20 USC §1087kk through §1087vv) shall be $3,000 or less. SSIG awards shall be offered, based on the application date, until funds are depleted.~~]

Section 2. [~~3.~~] Kentucky Tuition Grant (KTG) Program Awards. Whether or not the applicant is eligible for a CAP grant [~~SSIG~~] award, the application shall be reviewed for determination of eligibility for a KTG.

Section 3. [~~4.~~] KTG Need. For each KTG eligible applicant, the KTG need shall be computed according to the following formula: KTG need equals total cost of education minus the sum of:

(1) Expected Pell grant;

(2) Expected [~~Congressional methodology~~] family contribution; and

(3) CAP grant [~~or SSIG~~].

Section 4. [~~5.~~] KTG Award. (1) If an applicant does not qualify for a CAP grant [~~or SSIG award,~~] and the KTG need is an amount equal to or greater than $200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3), except that KTG awards shall be offered only to the extent funds are available.

(2) If an applicant does not qualify for a CAP grant [~~or SSIG award~~], and the KTG need is an amount less than $200, no award shall be made.

(3) If an applicant has received a CAP [~~or SSIG~~] award and KTG need is an amount equal to or greater than fifty (50) dollars, the KTG award shall be the lesser of the KTG need or the maximum grant specified in Section 6 of this regulation [~~established by the authority pursuant to KRS 164.785(3),~~] except that KTG awards shall be offered only to the extent that funds are available.

(4) A KTG shall not exceed $1,200 for an academic year.

Section 5. [~~6.~~] Minimum KHEAA Grant. The minimum KHEAA grant awarded to an eligible full-time student [~~any recipient~~] for a given academic year shall be $200.

[~~Section 7. SSIG and KTG shall be awarded as a KHEAA grant.~~]

Section 6. [~~8. The combination of a CAP grant and~~] A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award. A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books. [~~An SSIG for any semester shall not exceed the prevailing full-time student tuition charge at publicly supported community colleges at the time of the award. A KTG shall not exceed $1,200 for an academic year.~~] A semester award shall not exceed tuition and fee charges for that semester. No KHEAA grant award shall be made for a summer academic term.

Section 7. [~~9.~~] In no event shall the KHEAA grant award exceed the applicant's total cost of education less expected family contribution and other anticipated student financial assistance. The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the educational institution's determination of financial need for that student. The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

Section 8. [~~10.~~] If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked. If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant for which the student was ineligible.

Section 9. [~~11.~~] If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction. If the grant for the fall academic term has already been disbursed, then the reduction shall be made to the spring disbursement. If both the fall and spring disbursements have been made, the student shall [~~be notified that he or she must~~] repay the overaward to the authority.

Section 10. [~~12.~~] Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the educational institution shall be deemed ineligible, and the grant shall be revoked.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992, at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by

Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40501.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: There are anticipated to be over 79,000 applicants for student financial assistance in Kentucky for the 1992-93 academic year. A majority of those applicants will be applying for KHEAA grants. Of this group, there are anticipated to be 7,373 Kentucky Tuition Grant awards for the 1992-93 academic year.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation sets forth the criteria for a student to demonstrate financial need and prescribes a maximum KTG award of $1200. There are no costs to the applicants imposed by this regulation. However, $8,000,000 is appropriated for KTG awards in the first year of the 1992-94 biennium. Based upon historic utilization, it is estimated that average awards will be $1,085 per recipient, saving each of the anticipated 7,373 recipients that amount of tuition expense.

2. Continuing costs or savings: $8,223,500 is appropriated for KTG awards in the second year of the biennium.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None. This regulation sets forth standards of financial need and minimum and maximum award limits for Kentucky tuition grants. Those qualifying for the grant will incur no additional costs or savings. The amendments to this regulation do not change the award limits and would therefore have negligible effects upon competition among institutions for the student grant recipients.

(b) Reporting and paperwork requirements: None. The amendments to this regulation impose no new reporting requirements.

(2) Effects on the promulgating administrative body: Costs of administration of the KTG program are funded by agency receipts.

(a) Direct and indirect costs or savings:

1. First year: $848,930 is appropriated for administration of all student grant, scholarship, and work-study programs for the first year of the biennium. Included in that amount is an unallocated amount for the KTG program.

2. Continuing costs or savings: $869,000 is appropriated for all student aid programs in the second year of the biennium.

3. Additional factors increasing or decreasing costs: None. The amendments to this regulation merely eliminate certain common definitions and remove references to the state student incentive grant program but do not materially change the administration of the Kentucky tuition grant program.

(b) Reporting and paperwork requirements: None. The amendments to this regulation do not impose any reporting or record retention requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation prescribes criteria for demonstrating financial need and establishes KTG award minimums and maximums. The amendments do not change those maximums in order to maintain an average award amount that would be beneficial to students in light of the costs of higher education while serving essentially the same number of Kentucky students.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: The amendments to this regulation principally omit references to the state student incentive grant program and common definitions being promulgated as a separate new regulation.

TIERING: Was tiering applied? No. This regulation prescribes award limits of general applicability for students seeking Kentucky tuition grants. Tiering was not applied, because participation in this program is voluntary, and all students will be afforded an equal opportunity, within statutory guideline, to demonstrate financial need and receive a KTG award based upon that need.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:150. Notification of award.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation sets forth the procedures for notification to applicants and to educational institutions. This amendment deletes common definitions that are being placed in a separate regulation. The provisions of this regulation duplicate 11 KAR 11:040. Therefore, an amendment of this regulation repeals 11 KAR 11:040.

~~[Section 1. Definitions. The terms "authority", "business school", "college", "federal act", "grant", "school of nursing", and "vocational school" shall have the meanings defined in KRS 164.740. For purposes of this regulation, the terms listed below shall have the following meanings:~~

~~(1) "Educational institution" means an institution located in Kentucky which:~~

~~(a) Offers an eligible course of study;~~

~~(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution;~~

~~(c) Has entered into an administrative agreement with the authority; and~~

~~(d) For purposes of the State Student Incentive Grant Program, a business school, college, school of nursing or vocational school, as defined in KRS 164.740(3), (4), (17), and (18) respectively and meets the requirements of the federal act; or~~

~~(e) For purposes of the Kentucky Tuition Grant Program, a private, nonprofit college accredited by the Southern Association of Colleges and Schools, Commission on Colleges, and whose institutional programs are not comprised solely of sectarian instruction.~~

~~(2) "Eligible course of study" means a program offered by an educational institution which:~~

~~(a) Is of at least two (2) academic years duration; and~~

~~(b) Leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.~~

~~(3) "KHEAA grant program officer 'or' (KGPO)" means the official designated on the administrative agreement, pursuant to KRS~~

~~164.748(5), to serve as the authority's on-campus agent to certify all institutional transactions and activities with respect to the KHEAA grant programs.~~]

Section 1. [~~2.~~] The authority shall notify each KHEAA grant recipient of the amount of award together with disbursement information. The recipient shall notify the authority of any incorrect information appearing on the notice, including name, address, social security number or institutional choice errors or changes.

Section 2. [~~3.~~] So long as funds are available the authority shall individually notify [~~Kentucky~~] applicants of the reason for their denial. When funds are no longer available, public, rather than individual, notification shall be given.

Section 3. [~~4.~~] Periodically the authority shall forward to the KGPO at each educational institution a report listing student applicants indicating that institution as the one in which they plan to enroll.

Section 4. 11 KAR 11:040, Notification of award, is hereby repealed.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: It is anticipated that over 79,000 Kentucky students will file the Kentucky Financial Aid Form (KFAF) through the College Scholarship Service to apply for various programs of student financial assistance for the 1992-93 academic year. A majority of those students will apply for KHEAA grants. It is anticipated that KHEAA grant awards will be made to 30,241 of those students.

(a) Direct and indirect costs or savings to those affected:

1. First year: The regulation prescribes the method of notification to students of whether they will receive a KHEAA grant award. The amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. Accordingly, the amendment does not affect a cost or saving to KHEAA grant applicants.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The amendment does not change the method of notification of KHEAA grant awards, and, therefore, does not impose any new reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: The amendment does not change the method of notification of KHEAA grant awards. The amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. Accordingly, the amendment does not affect a cost or saving to the agency.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendment does not change the method of notification of KHEAA grant awards. Therefore, the amendment does not impose any new reporting or paperwork requirements upon the agency.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. This is intended to simplify the regulations in Chapter 5 of Title 11 of the Kentucky Administrative Regulations, and make them more readable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 11 KAR 11:040, pertaining to the College Access Program, was promulgated under authority of the 1990-92 biennial budget bill, and contains substantially similar provisions related to notification of CAP grant awards.

(a) Necessity of proposed regulation if in conflict: This amendment encompasses both the College Access Program and Kentucky Tuition Grant program for simplicity of administration of the KHEAA grant programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: An amendment to this regulation repeals 11 KAR 11:040.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied, because all KHEAA grant applicants are afforded the same type of notification, and the concept of tiering was not applicable.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:160. Disbursement procedures.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation sets forth the disbursement procedures for KHEAA grant programs. This amendment is necessary to delete common definitions that are being placed in a separate regulation and to clarify certain institutional duties. The provisions of this regulation substantially duplicate 11 KAR 11:050. Therefore, an amendment of this regulation repeals 11 KAR 11:050. [~~change the disbursement procedure to consist of a transfer of funds to the institution on behalf of all student grant recipients and reduce the number of registers to be completed by the institution.~~]

[~~Section 1. Definitions. The terms "authority", "business school", "college", "federal act", "grant", "school of nursing", and "vocational school" shall have the meanings defined in KRS 164.740. For purposes of this regulation, the terms listed below shall have the following meanings:~~

~~(1) "Educational institution" means an institution located in~~

~~Kentucky which:~~

~~(a) Offers an eligible course of study;~~

~~(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution;~~

~~(c) Has entered into an administrative agreement with the authority; and~~

~~(d) For purposes of the State Student Incentive Grant Program, a business school, college, school of nursing or vocational school, as defined in KRS 164.740(3), (4), (17), and (18) respectively and meets the requirements of the federal act; or~~

~~(e) For purposes of the Kentucky Tuition Grant Program, a private, nonprofit college accredited by the Southern Association of Colleges and Schools, Commission on Colleges, and whose institutional programs are not comprised solely of sectarian instruction.~~

~~(2) "Eligible course of study" means a program offered by an educational institution which:~~

~~(a) Is of at least two (2) academic years duration; and~~

~~(b) Leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.~~

~~(3) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the authority's on campus agent to certify all institutional transactions and activities with respect to the KHEAA grant programs.~~]

Section 1. [~~2.~~] Eligibility Verification. (1) The KHEAA grant program eligibility verification roster shall [~~will~~] be forwarded to the KGPO at each educational institution prior to the beginning of each semester.

(2) The KGPO shall certify the eligibility of KHEAA grant recipients [~~according to instructions attached to the roster~~] and return the roster [~~it~~] to the authority according to instructions attached to the roster [~~not later than three (3) weeks after the last date for students to enroll for that semester~~].

Section 2. [~~3.~~] Disbursement of Funds. (1) The authority shall transfer funds to the KGPO at the time the eligibility verification roster is transmitted. Upon receipt of the properly certified eligibility verification roster, the authority shall [~~will~~] transfer additional funds, if necessary, to the KGPO. The KGPO shall return to the authority, according to instructions attached to the roster, all funds advanced that remain undisbursed to eligible students.

(2) The instructions accompanying the eligibility verification roster shall specify:

(a) Conditions under which a KHEAA grant shall be disbursed to the benefit of the KHEAA grant recipient;

(b) Conditions under which KHEAA grant funds shall be returned to the authority; and

(c) The date by [~~on~~] which the roster and any undisbursed funds shall be returned to the authority.

(3) An institution which has not returned an eligibility verification roster or completed it according to instructions shall not receive additional KHEAA grant funds until it has satisfied the requirements in subsection (2) of this section. Furthermore, the authority, in its sole discretion, may withhold any services and funds from the educational institution from the due date until the roster and all funds advanced, that remain undisbursed to eligible students, are received by the authority.

Section 3. [~~4.~~] Alternative Disbursement. In lieu of the processes respecting the disbursement of KHEAA grant funds pursuant to Section 2 of this regulation, the authority, in its sole discretion, may enter agreements on such terms as the authority deems appropriate to provide alternative methods for economical and efficient disbursement of KHEAA grants.

Section 4. [~~5.~~] If the student submits to the authority a written request to receive the maximum KTG for which he is eligible during the fall semester and that request [~~that~~] is received by the authority not later than August 1 preceding the fall academic term for which a KTG is awarded, the entire amount of the KTG, up to the amount of tuition and fees charged for the fall academic term, may be disbursed for that academic term. Otherwise, a KTG shall be disbursed in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term. A CAP grant [~~An SSIG~~] shall always be disbursed in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term.

Section 5. [~~6.~~] KHEAA grants shall be disbursed to eligible students enrolled at an educational institution using the quarter system so that the first disbursement shall be in the fall quarter beginning in August, September, or October, and the second disbursement shall be in the winter quarter beginning in January, February, or March. Enrollment during a spring quarter beginning in April or later shall not qualify a student for KHEAA grant assistance.

Section 6. [~~7.~~] KHEAA grants shall be disbursed to eligible students enrolled at an educational institution using a short winter term in combination with longer fall and winter terms so that the first disbursement shall be in the fall academic term and the second disbursement shall be in the spring academic term. Enrollment during the shorter winter academic term shall not qualify a student for KHEAA grant assistance.

Section 7. [~~8.~~] The educational institution shall be responsible for proper disbursement of KHEAA grants. The institution shall be liable for disbursement to the wrong individual or to an ineligible student, and shall make restitution to the authority of any amount improperly disbursed. Failure of the institution to make restitution when required shall, without precluding other remedies, be deemed cause for limitation, suspension or termination of the participation of the institution in accordance with 11 KAR 4:020.

[~~Section 9. Undisbursed KHEAA grant funds shall be returned to the authority.~~]

Section 9. 11 KAR 11:050, Disbursement procedure, is hereby repealed.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: It is anticipated that 30,241 KHEAA grant awards will be made for the 1992-93 academic year for attendance at 57 participating educational institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: The amendment to this regulation clarifies the procedure for return of an eligibility verification roster and undisbursed grant funds but does not impose a new requirement in that regard. Therefore, the amendment causes no additional cost or savings to participants.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: All participating institutions must return the eligibility verification roster and undisbursed grant funds pursuant to the existing requirements of this regulation. The amendment to this regulation removes a specific three week deadline, and allows flexibility by permitting the authority to specify deadlines in the instructions to the eligibility verification roster to accommodate differing institutional academic schedules.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The amendments to this regulation merely eliminate some common definitions that are being placed in a separate regulation, and clarifies procedures related to the return of an eligibility verification roster and undisbursed grant funds. The amendments do not impose any new requirements and therefore result in no appreciable cost or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Administrative efficiencies result from prompt return of eligibility verification rosters and undisbursed funds by allowing maximum utilization of funds through reallocation to other eligible students.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements for the agency are not significantly increased, but the amendment removing a three week return period provides flexibility to the agency to accommodate any unique institutional schedules.

(3) Assessment of anticipated effect on state and local revenues: There is no overall impact on state revenues. This regulation provides for return of undisbursed grant funds by an institution. However, all appropriated funds are awarded as student grants and any undisbursed funds returned by one institution are promptly reallocated and transmitted to another participating institution where the needed funding is underestimated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no more efficient or accurate alternative to utilization of an eligibility verification roster to assure disbursement of funds only to eligible students. The alternative of billing the institution for undisbursed grant funds was rejected as administratively unnecessary.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 11 KAR 11:050, pertaining to the College Access Program, was promulgated under authority of the previous (1990-92) biennial budget bill, and contains provisions substantially similar to this regulation.

(a) Necessity of proposed regulation if in conflict: This amendment encompasses both the College Access Program and the Kentucky Tuition Grant program for simplicity of administration of both programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: An amendment to this regulation repeals 11 KAR 11:050.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation pertains to disbursement of grant awards by tendering funds to participating institutions for delivery to eligible students. The disbursement procedure is already relatively simple, and the advantage of a uniform disbursement procedure far outweighs any benefit to be derived from variations in the procedure.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:170. Refund and repayment policy.

RELATES TO: KRS 164.748(4), (8), (12), (14); 164.753(4)(a), 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky post secondary institutions. This regulation sets forth the apportionment of financial aid refunds from institutions and repayment from students due to the KHEAA grant programs. This amendment deletes certain common definitions that are being placed in a separate regulation. Additionally, the provisions of this regulation substantially duplicate 11 KAR 11:060. Therefore, an amendment of this regulation repeals 11 KAR 11:060.

[~~Section 1. Definitions. The terms "authority", "business school", "college", "federal act", "grant", "school of nursing", and "vocational school" shall have the meanings defined in KRS 164.740. For purposes of this regulation, the terms listed below shall have the following meanings:~~

~~(1) "Educational institution" means an institution located in Kentucky which:~~

~~(a) Offers an eligible course of study;~~

~~(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution;~~

~~(c) Has entered into an administrative agreement with the authority; and~~

~~(d) For purposes of the State Student Incentive Grant Program, a business school, college, school of nursing or vocational school, as defined in KRS 164.740(3), (4), (17), and (18) respectively and meets the requirements of the federal act; or~~

~~(e) For purposes of the Kentucky Tuition Grant Program, a private, nonprofit college accredited by the Southern Association of Colleges and Schools, Commission on Colleges, and whose institutional programs are not comprised solely of sectarian instruction.~~

~~(2) "Eligible course of study" means a program offered by an educational institution which:~~

~~(a) Is of at least two (2) academic years duration; and~~

~~(b) Leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.~~]

Section 1. [~~2.~~] A student who fails to enroll, withdraws or changes enrollment status may be due a refund of monies paid to the institution or may owe a repayment of cash disbursements made to the student for educational[~~ly related~~] expenses. If the student received financial aid, a portion of the refund and/or repayment shall be due to the financial aid programs.

Section 2. [~~3.~~] The amount of the refund and/or repayment shall be determined in accordance with the educational institution's refund and repayment policies relative to financial aid funds, except as

provided in Section 3 [4] of this regulation. These policies shall be published and consistently administered. The policies shall be filed with the authority. The authority shall be notified in writing of any changes in such policies.

Section 3. [4.] When a KHEAA grant recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund or repayment of the KHEAA grant shall be required, notwithstanding any institutional policy to the contrary. In cases of unofficial withdrawal, the institution shall use the last recorded date of class attendance by the student as the end of the student's enrollment. If the institution is unable to document the student's last date of attendance, any KHEAA grant disbursement for that award period shall be subject to full refund and repayment. If, at any time, a KHEAA grant recipient's enrollment is terminated with no assessment of tuition and fees by the institution, then the full KHEAA grant shall be subject to cancellation, if not yet disbursed, or refund and repayment if the grant has already been disbursed.

Section 4. [5.] If a refund is due under the institution's financial aid refund policy, the KHEAA grant or a portion thereof shall be refunded by the institution by check made payable to KHEAA grants. The institution shall multiply the total financial aid refund amount by the following fraction to determine the portion of the refund to be returned to the authority:

$$\frac{\text{KHEAA [state] grant for the term}}{\text{Total aid awarded for the term (Minus work earnings)}}$$

Section 5. [6.] (1) If, under the institution's financial aid repayment policy, the student owes a repayment, the KHEAA grant or a portion thereof shall be repaid to the authority by the student. The institution shall calculate the amount of repayment due to the authority and notify the student and the authority in a timely fashion regarding the amount due to the authority. Students are required to make such repayments by certified check or money order payable to KHEAA Grants, Frankfort, Kentucky. The institution shall multiply the total financial aid repayment amount by the following fraction to determine the portion of the repayment to be paid to the authority by the student:

$$\frac{\text{KHEAA [state] grant for the term}}{\text{Total aid awarded for the term (Minus work earnings)}}$$

(2) The authority shall notify the student and the institution when repayment is received.

Section 6. [7.] Refunds by institutions and notifications of student repayments due transmitted to the authority shall be accompanied by student's name and social security number, the reason for the refund or repayment, date of enrollment status change, the semester and year, and the calculation used for determining each refund or repayment.

Section 7. 11 KAR 11:060, Refund and repayment policy, is hereby repealed.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992, at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40501.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: It is anticipated that 30,241 KHEAA grant awards will be made for the 1992-93 academic year totaling over $20 million. Based upon previous experience, it is anticipated that 1.25% of those awards will result in institutional refunds or student repayments of a portion of the KHEAA grant totaling 0.75% of the awarded amount due to student withdrawals prior to completion of the academic period for which the grant is awarded.

(a) Direct and indirect costs or savings to those affected:

1. First year: The regulation prescribes the method of computing a refund or repayment of a KHEAA grant. The amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. Accordingly, the amendment does not affect a cost or saving to KHEAA grant applicant.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The amendment does not change the method of computing refunds and repayment of KHEAA grants, and, therefore, does not impose any new reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: The amendment does not change the method of computation of refunds and repayment of KHEAA grants. The amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. Accordingly, the amendment does not affect a cost or saving to the agency.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendment does not change the method of computation of refunds and repayment of KHEAA grants. Therefore, the amendment does not impose any new reporting or paperwork requirements upon the agency.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendment to this regulation merely eliminates some common definitions in favor of transferring them to a separate, single regulation. This is intended to simplify the regulations in Chapter 5 of Title 11 of the Kentucky Administrative Regulations, and make them more readable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 11 KAR 11:060, pertaining to the college access program, was promulgated under authority of the 1990-92 biennial budget bill and contains substantially similar provisions related to notification of CAP grant awards.

(a) Necessity of proposed regulation if in conflict: This amendment encompasses both the college access program and Kentucky tuition grant program for simplicity of administration of the KHEAA grant programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: An amendment to this regulation repeals 11 KAR 11:060.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied, because refunds and repayment of KHEAA grants are generally determined based upon the policies of the institution attended by the KHEAA grant recipient. Therefore, they are primarily matters of the contractual arrangement between students and their institution, and the concept of tiering was not applicable.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:180. Records and reports.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation requires that educational institutions provide records and reports to the authority. This amendment is necessary to delete common definitions that are being placed in a separate regulation, and delete provisions that impose requirements upon the form of an enrollment contract. Additionally, the provisions of this regulation substantially duplicate 11 KAR 11:070. Therefore, an amendment to this regulation repeals 11 KAR 11:070. [~~add a specific record retention period previously omitted.~~]

[~~Section 1. Definitions. The terms "authority", "business school", "college", "federal act", "grant", "school of nursing", and "vocational school" shall have the meanings defined in KRS 164.740. For purposes of this regulation, the terms listed below shall have the following meanings:~~

~~(1) "Educational institution" means an institution located in Kentucky which:~~

~~(a) Offers an eligible course of study;~~

~~(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution;~~

~~(c) Has entered into an administrative agreement with the authority; and~~

~~(d) For purposes of the State Student Incentive Grant Program, a business school, college, school of nursing or vocational school, as defined in KRS 164.740(3), (4), (17), and (18) respectively and meets the requirements of the federal act; or~~

~~(e) For purposes of the Kentucky Tuition Grant Program, a private, nonprofit college accredited by the Southern Association of Colleges and Schools, Commission on Colleges, and whose institutional programs are not comprised solely of sectarian instruction.~~

~~(2) "Eligible course of study" means a program offered by an educational institution which:~~

~~(a) Is of at least two (2) academic years duration; and~~

~~(b) Leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.~~]

Section 1. [~~2.~~] Records and Reports. An educational institution shall establish an organized system of records pertaining to KHEAA grant recipient eligibility, maintain these records for a period of not less than five (5) years after the award year in which the recipient ceased enrollment, and, upon [~~written~~] request, make available to the authority:

(1) All records relied upon by that institution to certify that any recipient of funds from the authority is an eligible student [~~pursuing an eligible course of study~~]; and

(2) Information necessary to verify that the institution has complied with 11 KAR Chapter 5, and the federal act, and representations and requirements contained in its agreement with the authority.

[~~Section 3. Any educational institution which requires a student to execute a contract providing for payment of tuition and fees shall include on the face of that contract:~~

~~(a) Date the student signed the contract;~~

~~(b) Date student began or will begin classes;~~

~~(c) Expected graduation date;~~

~~(d) Major field of study;~~

~~(e) Minor field of study;~~

~~(f) Full or part time enrollment status; and~~

~~(g) All degrees previously earned.~~

~~A copy of the contract for the academic period for which the KHEAA grant is awarded for each applicant certified as eligible shall be submitted with the eligibility verification roster.~~]

Section 3. 11 KAR 11:070, Records and reports, is hereby repealed.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992, at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40501.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: 57 educational institutions participate in the KHEAA grant programs.

(a) Direct and indirect costs or savings to those affected: The amendments to this regulation eliminate requirements that certain information be included in an institution's enrollment contract and that a copy of each student's contract be submitted with the eligibility verification roster.

1. First year: The amendment potentially could save institutions an undetermined amount associated with printing the required information on the enrollment contracts, and copying and transmitting a contract for each KHEAA grant recipient.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any

effects upon competition): None

(b) Reporting and paperwork requirements: See #1 above.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The amendment eliminating requirements pertaining to enrollment contracts will save an undetermined administrative expense associated with reviewing and storing enrollment contracts for each KHEAA grant recipient.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See #1 above.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: An amendment to this regulation eliminates common definitions and transfers them to a single, separate regulation. The alternative under KRS Chapter 13A would be to retain the definitions as the first section of each regulation. This approach was previously used but has been changed to eliminate duplication and simplify the readability of the regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 11 KAR 11:070, pertaining to the college access program, was promulgated under authority of the previous (1990-92) biennial budget bill. That regulation contains provisions substantially similar to this regulation.

(a) Necessity of proposed regulation if in conflict: This regulation now encompasses both the college access program and the Kentucky tuition grant program for simplicity of administration of both programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: An amendment to this regulation repeals 11 KAR 11:070.

(6) Any additional information or comments: Requirements in this regulation that enrollment contracts contain certain information and that a copy of each grant recipient's contract be submitted to KHEAA were originally intended as reasonable consumer disclosure, primarily as additional verification of KHEAA grant eligibility. It has been determined that adequate assurance of grant eligibility is afforded through the eligibility verification roster and the capability of KHEAA to conduct program compliance reviews. Accordingly, the requirements are being removed.

TIERING: Was tiering applied? No. The records required to be maintained are the minimum necessary to confirm student eligibility and proper disposition of KHEAA grant funds. The record retention period is consistent with the requirements for federal student financial assistance programs. No new requirements are imposed by the amendments to this regulation. Therefore, the concept of tiering would not apply to those amendments.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 10:010. Paul Douglas [~~Congressional~~] teacher scholarship program.

RELATES TO: KRS 164.744(2), 164.748(7), (8), 34 CFR Part 653

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 34 CFR Part 653, subparts C, D, E

NECESSITY AND FUNCTION: PL 98-558 established the Carl D. Perkins Scholarship Program, subsequently renamed the Congressional Teacher Scholarship Program and then renamed the Paul Douglas Teacher Scholarship Program, to encourage academically talented students to become teachers in a [~~the~~] public or [~~and~~] private, nonprofit preschool, elementary or [~~and~~] secondary school, or education program in any state [~~s of the United States~~]. Pursuant to Section 563 of the federal act [~~Higher Education Act of 1965~~] (20 USC §1119d-2), the governor designated the authority as the agency to administer this program on behalf of the Commonwealth. 34 CFR 653.32(a) authorizes the authority to establish selection criteria. 34 CFR 653.20(b)(5) and 653.21 require the authority to limit the amount of awards, restrict eligibility for awards, and authorizes the authority to establish policies and procedures necessary to administer repayment. This regulation prescribes rules for the administration of the Paul Douglas [~~Congressional~~] Teacher Scholarship Program. This amendment corrects the name of the program and makes other changes to conform with the format requirements of KRS Chapter 13A.

[~~Section 1. The Kentucky Higher Education Assistance Authority (authority) shall, to the extent of funds available for such purpose, award Congressional Teacher Scholarships to persons enrolled or accepted for enrollment on a full-time basis in a qualified teacher education program at participating institutions of higher education, who declare an intention to enter the teaching profession in a public or private, nonprofit preschool, elementary, or secondary school or public education program, and who meet the eligibility requirements set forth herein.~~]

Section 1. [~~2.~~] Definitions. (1) "Academic year award" means the aggregate amount of scholarship assistance received for one (1) academic year (July 1 through June 30) represented by one or more recipient agreements or [~~/~~] promissory notes.

(2) "Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one (1) of the following:

(a) Two (2) semesters.

(b) Two (2) trimesters.

(c) Three (3) quarters. [~~"Qualified teaching service" means to teach on a full-time basis in a public or private, nonprofit preschool, elementary, or secondary school or public education program, in any state.~~]

(3) The definition of "authority" is governed by KRS 164.740(1).

[~~(3) "Participating institution" means an institution of higher education located in Kentucky, which offers a qualified teacher education program, and which has in force an agreement with the authority providing for administration of this program.~~]

(4) "Course of study" [~~"Qualified teacher education program"~~] means a first undergraduate program of study at an institution of higher education, which leads to initial teacher certification at the preschool, elementary or secondary school level, but does not include graduate study unless it is required for initial teacher certification. [~~and which does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.~~]

(5) "Collection costs" mean the costs incurred by the authority or its agents, including the costs of long distance phone calls, certified mail, skiptracing, court costs, and[~~/or~~] attorney fees, necessary to recover past due payment from the scholar [~~scholarship recipient~~].

(6) The definition of "federal act" is governed by KRS 164.740(9).

(7) "Full-time student" means a student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

(8) "Institution of higher education" means a public or private, nonprofit educational institution approved by the secretary under the federal act for participation in the Paul Douglas Teacher Scholarship program.

(9) "Qualified teaching service" means to teach on a full-time basis in a public or private, nonprofit preschool, elementary, or secondary school or education program, in any state.

(10) "Scholar" means a Paul Douglas Teacher Scholarship recipient.

(11) The definition of "scholarship" is governed by KRS

164.740(18).

(12) The definition of "secretary" is governed by KRS 164.740(20).

[Section 3. Applicable Laws. This program shall be administered in accordance with Section 561 et seq. of the Higher Education Act of 1965 (20 USC §1119d et seq.) and implementing regulations, 34 CFR Part 653, incorporated herein by reference.]

Section 2. The authority shall, to the extent of funds available for such purpose, award Paul Douglas Teacher Scholarships to persons enrolled or accepted for enrollment as a full-time student in a course of study at an institution of higher education, who declare an intention to enter the teaching profession in a qualified teaching service position and who meet the eligibility requirements set forth in Section 3 of this regulation and are selected pursuant to Section 4 of this regulation.

Section 3. [4.] Eligibility Criteria. In order to apply and be considered for a scholarship, an individual must meet the following criteria:

(1)(a) Be a U.S. citizen or national;

(b) Provide evidence from the U.S. Immigration and Naturalization Service that he:

1. Is a permanent resident of the United States; or

2. Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(c) Be a permanent resident of the Trust Territory of the Pacific Islands;

(2) Be a resident of the Commonwealth of Kentucky, as determined in accordance with the Council on Higher Education's policy on classification for fee assessment purposes at 13 KAR 2:040;

(3)(a) Have graduated or be scheduled to graduate from high school within three (3) months of the date of the award and rank in the top ten (10) percent of high school graduating class; or

(b) Have received a certificate of high school equivalency for successfully completing the tests of General Educational Development (GED) with GED test scores equivalent to ranking in the top ten (10) percent of the high school graduates in Kentucky, or nationally, in the academic year for which the eligibility determination is being made [and never have previously attended college];

[(4) Be a full-time student;

(5) Enroll in a qualified teacher education program of study at a participating Kentucky institution;

(6) Cannot currently be receiving an award from another teacher scholarship/loan program administered by the authority;

(7) Declare an intention to obtain teacher certification and to render qualified teaching service in a public or private nonprofit preschool, elementary or secondary school or public education program in any state;

(8) Sign the recipient agreement/promissory note; and

(9) Cannot be in financial arrears to any federal or authority financial aid program.]

Section 4. [5.] Selection Criteria. Recipient selection shall [will] be made on the basis of the following weighted criteria:

(1) Cumulative high school grade point average (forty (40) [fifty (50)] percent);

(2) American College Test composite standard score (thirty (30) [thirty-five (35)] percent);

(3) Enrollment at a Kentucky institution of higher education (ten (10) percent);

(4) First-time enrollment at an institution of higher education as a full-time student (ten (10) percent);

(5) [(3)] Level of communication skills rated by a high school counselor, teacher, or principal (four (4) [(five (5)] percent);

(6) [(4)] Ability to become an effective teacher rated by a high school counselor, teacher, or principal (four (4) [(five (5)] percent); and

(7) [(5)] Intent to teach in a critical shortage area designated by the secretary pursuant to section 428 of the federal act (two (2) [(five (5)] percent).

If funds are insufficient to award all applicants, the scholarships shall first be awarded to those qualifying for awards pursuant to Section 5 of this regulation whose renewal applications are received by the authority by April 1 each year [applicants who previously received scholarships]. The deadline for receipt of initial scholarship applications shall [will] be April 15 [established] each year [by the authority]. If [Once all the criteria have been evaluated and] two (2) or more applicants are equally ranked, selection between the applicants shall [will] be made on the basis of the date the application is received by the authority.

Section 5. [6.] Renewal. Additional academic year awards [Scholarships] shall be made [renewed] annually upon application by an eligible scholar for a maximum of three (3) years of undergraduate study [for those who maintain continuous full-time enrollment and at least the equivalent of a 2.5 cumulative grade point average on a scale of 4.0, and provided that the recipient, when first eligible, enrolls in a qualified teacher education program and, thereafter, continues to be enrolled on a full-time basis in such a program and makes satisfactory academic progress at a participating institution]. The criteria to maintain eligibility for renewal of scholarships is governed by 34 CFR 653.41.

Section 6. [7.] Award Maximums. The maximum academic year [teacher scholarship] award [for an academic year] shall be $5,000. The aggregate maximum of Paul Douglas teacher scholarship awards shall not exceed $20,000 per individual. Awards shall not exceed the scholar's [student's] total cost of attendance at the institution of higher education less other financial assistance received pursuant to Title IV of the federal act as determined by the [participating] institution.

Section 7. [8.] Disbursements. Payment shall be made at the beginning of each term, and each [such] disbursement shall be evidenced by an [a recipient] agreement or [/] promissory note, required pursuant to Section 9 of this regulation [prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof].

Section 8. [9.] Notifications. Scholars [Recipients] shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of enrollment in a course of study [qualified teacher education program];

(3) Employment in a qualified teaching service position or cessation of such employment;

(4) Change in deferment status; or

(5) Change of address.

Section 9. Scholarship Agreement. The requirement and content of a scholarship agreement is governed by 34 CFR 653.40, 52 Federal Register 45285, November 25, 1987, as amended at 55 Federal Register 35006, August 27, 1990.

[Section 10. Withdrawals. Scholarship recipients who, prior to completion, cease to be enrolled in a qualified teacher education program at an institution of higher education and fail to reenroll in such a program within the succeeding six (6) months shall immediately become liable for the repayment to the authority of the sum of all scholarship funds received plus interest accrued thereon and any applicable collection costs, unless such recipient has an approved deferment pursuant to 11 KAR 10:020.]

Section 10. [~~11.~~] Failure to Render Qualified Teaching Service. The consequences of a scholar's failure to render qualified teaching service, including the commencement and rate of repayment and the interest charges, are governed by 34 CFR 653.42(a) through (f), 52 Federal Register 45285, November 25, 1987. [~~Recipients who inform the authority that they do not intent to perform the required qualified teaching service or who do not begin employment in a qualified teaching service position by the date necessary to allow performance of all such service within the ten (10) year period following completion of a qualified teacher education program (excluding periods of approved deferment pursuant to 11 KAR 10:020) shall immediately become liable to the authority for repayment of principal and interest accrued on all scholarship funds received and any applicable collection costs. The day that a recipient discontinues qualified teaching service (excluding periods of approved deferment pursuant to 11 KAR 10:020), repayment of all promissory notes then outstanding and any applicable collection costs shall become due.~~]

Section 11. [~~12.~~] Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholar's [~~scholarship recipient's~~] last known address and shall be effective upon mailing. Repayment shall be made in monthly installments [~~of $100 or such higher monthly installments~~] as may be necessary to repay all sums due within the time and in amounts required by the scholar's agreement [~~ten (10) years from commencement of repayment~~]. The authority may agree, in its sole discretion upon a showing of financial hardship by the scholar [~~scholarship recipient~~], to accept repayment in installments [~~of~~] less than those required by the scholar's agreement [~~$100 per month~~] in accordance with a schedule established by the authority. [~~In the event that more than one (1) recipient agreement/promissory note has come due for repayment and remains unpaid, then~~] Payments shall first be applied to the earliest unpaid scholarship [~~recipient agreement/promissory note~~]. Payments shall be applied first to accrued interest and then to principal.

Section 12. [~~13.~~] Cancellation. The conditions for cancellation of repayment of scholarships are governed by 34 CFR 653.42(k). [~~(1) In order to receive cancellation of the repayment obligation, a scholarship recipient must render qualified teaching service for two (2) academic years for each academic year award. Repayment of one (1) such academic year award and the interest thereon shall be cancelled for each two (2) year period during which qualified teaching service is verified to the authority.~~

~~(2) Notwithstanding the foregoing, repayment of one (1) academic year award and the interest thereon shall be cancelled for each one (1) academic year in which qualified teaching service is rendered in an area of teacher shortage designated by the United States Secretary of Education pursuant to 20 USC §1078(b)(4).~~

~~(3) Such cancellations of repayment shall be in sequential order beginning with the earliest promissory note(s). Cancellation of part of an academic year award shall be granted upon completion of each semester or its equivalent of the required qualified teaching service. Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal, within thirty (30) days of the date a scholarship recipient completes such qualified teaching service.~~

~~(4) Additionally, the authority shall cancel a scholar's repayment obligations if it determines:~~

~~(a) On the basis of a sworn affidavit of a qualified physician, that the scholar is unable to teach on a full-time basis because of an impairment that is expected to continue indefinitely or result in death; or~~

~~(b) On the basis of a death certificate or other evidence of death that is conclusive under state law, that the scholar has died.~~]

~~[Section 14. Interest. Interest shall accrue and the interest rate on scholarship funds shall be computed as set forth in 34 CFR §653.42.]~~

Section 13. [~~15.~~] Records. A participating institution of higher education shall maintain complete and accurate records pertaining to the eligibility, enrollment and academic progress of scholars, [~~students receiving aid under this program and~~] the disbursement of funds and institutional charges as may be necessary to audit the disposition of funds hereunder. Such records shall be maintained for at least five (5) years after the scholar [~~student~~] ceases to be enrolled at the institution.

Section 14. [~~16.~~] Refunds. A participating institution of higher education shall refund to the authority, within forty (40) days of a scholar's [~~recipient's~~] last date of attendance, any amount attributable to this program which is determined to be due under the institution's refund policy.

Section 15. [~~17.~~] Information Dissemination and Recruitment. The authority shall disseminate information through high school guidance offices about this program to potential recipients. Participating institutions of higher education shall provide assurances that program information will be disseminated to students enrolled at that institution. Students from low income, economically disadvantaged and minority population groups shall be actively recruited for participation in this program.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: It is estimated that 47 students will receive scholarship awards under the Paul Douglas Teacher Scholarship Program in the 1992-93 academic year.

(a) Direct and indirect costs or savings to those affected:

1. First year: $227,700 in federal funds has been appropriated for scholarships for the 1992-93 academic year. All of the funds will be awarded as scholarships, and will therefore save that amount of tuition expenditure.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Federal regulations require scholarship recipients to sign an agreement with the state agency, and to provide verification of teaching service. This regulation requires recipients to notify the agency of changes of address, enrollment status, and deferment status.

(2) Effects on the promulgating administrative body: Minimal

administrative expense.

(a) Direct and indirect costs or savings:

1. First year: There is no direct expenditure by the agency of state funds for scholarship awards. The program is entirely funded by federal funds. Agency receipts are used to defray the administrative expenses for all student aid programs. A small, but unallocated amount of agency receipts will be used to defray the administrative costs.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Paperwork associated with reviewing applications, executing and storing recipient agreements, receiving and storing notifications of the recipient's enrollment and teaching status, and collection activity on an estimated 47 recipients.

(3) Assessment of anticipated effect on state and local revenues: Adoption of the amendments citing and implementing federal regulations provides the necessary assurances to permit receipt of $227,700 in federal funds in each year of the biennium.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no adequate alternatives to adoption of federal regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The regulation provides equal treatment and opportunity for all scholarship applicants and recipients. No disparate treatment is warranted or permissible under federal rules.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR Part 653, subparts C, D, and E.

2. State compliance standards. This regulation establishes student eligibility and selection criteria that are consistent with federal requirements and have previously been approved by the U.S. Department of Education. The criteria include high school grades, college entrance exam scores and assessment of communication and teaching skills.

3. Minimum or uniform standards contained in the federal mandate. The minimum federal eligibility standards include state residency and U.S. citizenship, high school graduation or its equivalent, and ranking in the top 10% of the high school class.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The regulation imposes requirements that have previously been approved by the U.S. Department of Education and adopts specific federal regulatory requirements where applicable. No stricter additional or different requirements are imposed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 10:020. Deferment and reduction of repayment.

RELATES TO: KRS 164.744(2), 164.748(7), (8), 34 CFR 653.21, 653.42

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 34 CFR 653.21, 653.42

NECESSITY AND FUNCTION: Public Law 98-558 established the Carl D. Perkins Scholarship Program, subsequently renamed the Congressional Teacher Scholarship Program and then subsequently renamed the Paul Douglas Teacher Scholarship Program. The Kentucky Higher Education Assistance Authority (authority) administers the program on behalf of the Commonwealth of Kentucky. That law, at 20 USC §1119d-7, and federal regulation 34 CFR 653.42(g), (i) and (j), authorize certain exceptions to repayment. 34 CFR 653.42(h) authorizes the authority to prescribe documentation necessary to obtain a deferment. 34 CFR 653.42(d)(2)(ii) authorizes the authority to reduce the required payments upon a showing of inability to repay. 34 CFR 653.21(a)(4) requires the authority to establish and implement policies and procedures necessary to administer repayment under 653.42. This regulation defines "deferment" and establishes conditions under which specified types of deferments may be approved by the authority. This amendment corrects the name of the program and makes other changes necessary to conform to the format requirements of KRS Chapter 13A.

Section 1. Definitions. (1) The definition of "authority" is governed by KRS 164.740(1). [~~Unless otherwise specified, the words and phrases used herein shall have the same meaning as set forth in 11 KAR 10:010.~~]

(2) "Deferment" means a temporary waiver of the obligation of a scholar [~~Congressional Teacher Scholarship recipient~~] to make payments to the authority, pursuant to one (1) or more [~~recipient~~] agreements or [~~/~~] promissory notes executed between the scholar [~~recipient~~] and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the scholar [~~recipient~~].

(3) The definition of "federal act" is governed by KRS 164.740(9).

(4) "Institution of higher education" means a public or private, nonprofit educational institution approved by the secretary under the federal act for participation in the Paul Douglas Scholarship program.

(5) "Qualified teaching service" means to teach on a full-time basis in a public or private, nonprofit preschool, elementary, or secondary school or education program in any state.

(6) The definition of "secretary" is governed by KRS 164.740(20).

(7) "Scholar" means a Paul Douglas Scholarship recipient.

(8) The definition of "scholarship" is governed by KRS 164.740(18).

Section 2. Request for Deferment. The scholar shall [~~recipient must~~] request a deferment in writing by submitting complete and accurate information on a form provided [~~prescribed~~] by the authority. The scholar's [~~recipient's~~] submission of a request for deferment shall constitute authorization for the authority to request and receive [~~such~~] verification of facts represented by the scholar [~~recipient~~] as may be deemed necessary by the authority. The scholar shall provide to the authority, at least annually:

(1) For purposes of an enrollment deferment, evidence of enrollment certified by an authorized representative of an institution of higher education;

(2) For purposes of a disability deferment, an affidavit from a licensed physician certifying that the scholar or spouse is temporarily totally disabled;

(3) For purposes of an unemployment deferment, a signed statement that sets forth:

(a) The scholar's current address;

(b)1. The names of school districts to which the scholar has applied for qualified teaching service employment; or

2. The names and addresses of each public or private employment agency, if one is accessible, where the scholar has registered; and

(c) The scholar's agreement to notify the authority within thirty (30) days of the date upon which he obtains either full-time

employment in a qualified teaching service position or other full-time employment; or

(4) For purposes of a military deferment, a statement, signed by an authorized representative of the armed forces, evidencing the active duty status and period of enlistment of the scholar.

If, during the period of deferment, a change occurs in the scholar's circumstances that served as the basis for the deferment approved pursuant to this section, then that deferment shall immediately terminate.

Section 3. Effect on Repayment. The consequences of a deferment upon the obligation of a scholar to repay is governed by 34 CFR 653.42(i) and (j), 52 Federal Register 45285, November 25, 1987. [~~During a deferment, no principal or interest repayments shall be required and interest shall not accrue on the unpaid principal balance owed by the recipient. If, during a deferment, the recipient resumes full-time enrollment in a teacher education program at an institution of higher education or renders qualified teaching service, then the deferment shall nullify the commencement of repayment, such that any recipient agreement/promissory note so deferred may be subsequently cancelled in accordance with 11 KAR 10:010.~~]

Section 4. Types of Deferments. The circumstances that qualify for deferment are governed by 34 CFR 653.42(g), 52 Federal Register 45285, November 25, 1987. [~~The following deferments may be granted by the authority:~~

~~(1) Enrollment deferment. A deferment may be granted to a recipient who is enrolled on a full-time basis at an institution of higher education in the United States. The recipient must provide to the authority, at least annually, evidence of such enrollment on properly completed forms provided by the authority. For purposes of this paragraph, full-time enrollment shall be determined according to the policy of the institution in which the recipient is enrolled.~~

~~(2) Disability deferment. A deferment may be granted to a recipient who is temporarily totally disabled and, therefore, unable to obtain any full-time employment or to attend school; or, a deferment granted to a recipient who is unable to obtain any full-time employment or attend school due to the temporary total disability of the recipient's spouse who requires continuous (twenty-four (24) hour) nursing or similar care by the recipient. For purposes of this deferment, a recipient, or the spouse of a recipient, is temporarily totally disabled if he/she suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude gainful employment or school attendance and, in the case of a recipient's spouse, he/she is not confined to a hospital, nursing home, intermediate care facility, or similar institution. The recipient must provide to the authority a statement from a licensed physician certifying that the recipient or spouse is temporarily totally disabled in accordance with the preceding terms and conditions. The recipient is solely responsible for securing the physician's certifications. This deferment may, at the authority's discretion, be granted for a period not to exceed three (3) years, subject to annual review of a physician's certification, except that a deferment granted because of spousal disability shall not exceed one (1) year.~~

~~(3) Unemployment deferment.~~

~~(a) A recipient seeking, but unable to obtain, a qualified teaching service position following completion of a teacher education program, who demonstrates to the satisfaction of the authority that he/she is unable to pay according to the terms established pursuant to 11 KAR 10:010, may be granted a single deferment for successive periods not to exceed one (1) year each. The recipient must have applied for a qualified teaching service position with at least three (3) school districts and must not have refused an offer of employment in a qualified teaching service position in such school districts or in any other school districts to which the recipient may have applied, and must provide the authority a signed statement which sets forth:~~

~~1. The recipient's current address;~~

~~2. The names of school districts to which the recipient has applied for qualified teaching service employment; and~~

~~3. The recipient's agreement to notify the authority when he/she obtains full-time employment in a qualified teaching service position; or,~~

~~(b) A recipient seeking, but unable to obtain, any full-time (at least thirty (30) hours per week) employment may be granted a single deferment for a period not to exceed one (1) year. The recipient must provide, on the form prescribed by the authority, a signed statement which sets forth:~~

~~1. The recipient's current address;~~

~~2. Certification that the recipient has registered with a public or private employment agency, if one is accessible, specifying the name and address of such agency; and~~

~~3. The borrower's agreement to notify the authority within thirty (30) days of a date upon which he/she obtains full-time employment.~~

~~If full-time employment is obtained at any time during the period of a deferment approved pursuant to this section, such deferment shall be immediately terminated.~~

~~(c) The immediately preceding subsections of this section are alternative ways to qualify for a single deferment for a period not to exceed one (1) year. Pursuant to paragraph (a) of this subsection, a recipient, who is seeking, but unable to obtain, a qualified teaching service position, may receive a deferment even if employed full-time in another type of position. Pursuant to paragraph (b) of this subsection, a recipient, who is not actively seeking a qualified teaching service position, may receive a deferment only if actively seeking and unable to obtain any type of full-time employment.~~

~~(4) Military deferment. A deferment may be granted by the authority when a recipient serves on active duty as a member of the armed forces of the United States. The recipient must provide to the authority a statement, signed by an authorized representative of armed forces evidencing the active duty status and period of enlistment of the recipient. This deferment shall remain in effect during the period of the active duty not to exceed three (3) years. The recipient is solely responsible for securing, at least annually, the required verification.~~]

Section 5. [~~(5)~~] Financial Incapacity. The authority may temporarily reduce the installments required for [~~forbear collection and suspend~~] repayment of a scholarship, at its sole discretion, upon a demonstration that the scholar [~~recipient~~], due to lack of income or other financial circumstances beyond the scholar's [~~recipients~~] control, is temporarily unable to repay the scholarship in accordance with the regular [~~established~~] repayment schedule. The scholar shall [~~recipient must~~] request this reduced repayment schedule [~~such deferment~~] by submitting a statement, signed by the scholar [~~recipient~~], on a form provided [~~prescribed~~] by the authority, delineating all of the income, expenses, and other financial circumstances of the scholar [~~recipient~~] constituting the asserted financial incapacity.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend

the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: The number of recipients who will seek deferment cannot be determined with certainty because of the unforseeability of various circumstances (i.e., enrollment, unemployment, disability, etc.). Currently, 115 students have received scholarships, and 5 who completed program requirements but were unable to find a qualified teaching position have been granted unemployment deferments.

(a) Direct and indirect costs or savings to those affected:

1. First year: The nature of a deferment under this program postpones payments and temporarily stops the accrual of interest. As mentioned above, the number of recipients who will seek and qualify for deferment cannot be precisely predicted. However, during the past academic year, deferments for 5 recipients postponed payments and stopped interest accrual on $85,000 in scholarships.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The regulation permits recipients to demonstrate financial hardship and arrange payments of less than $1200 per year; currently, no recipients are making reduced payments under those conditions.

(b) Reporting and paperwork requirements: Recipients are required to submit documentation verifying their circumstances (i.e., enrollment, unemployment, disability, financial hardship, etc.) when seeking deferment or reduced payments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost to the agency involves the insubstantial administrative cost associated with reviewing and storing the documentation for deferment or reduced payments.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: There is no loss of interest income to the agency during a deferment, because the funds being repaid are entirely federal restricted funds.

(b) Reporting and paperwork requirements: Request for deferment or reduced payments would necessitate review of documentation verifying the recipient's circumstances.

(3) Assessment of anticipated effect on state and local revenues: None. See (2)(a)3 above.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The regulation prescribes the minimum information necessary to permit the agency to verify the recipient's circumstances.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The conditions that qualify for a deferment are specified in federal regulations. The information required to be submitted by the recipient is the minimum necessary to verify the circumstances. Therefore, uniform application of the requirements for submission of information is essential for fair and equitable treatment of all scholarship recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR Part 653.42(d)(2)(ii) and 653.42(h).

2. State compliance standards. The regulation requires a scholarship recipient seeking a deferment to submit, for the pertinent type of deferment, a certification of enrollment from a college representative, a certified statement of disability from a physician, a certified statement of enlistment from a military representative, or the names and addresses of prospective employers and employment agencies in the event of unemployment. In the case of financial incapacity, the recipient must submit details of income, expenses and other financial circumstances.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires that a scholarship recipient seeking reduced payments because of financial circumstances must demonstrate to the agency's satisfaction that the recipient is financially unable to pay the full monthly payment, and recipients seeking deferment must submit a written claim with supporting documentation required by the state agency.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. This regulation does not impose stricter, additional or different requirements than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

COUNCIL ON HIGHER EDUCATION
(Proposed Amendment)

13 KAR 2:020. Guidelines for undergraduate admission to the state-supported institutions of higher education in Kentucky.

RELATES TO: KRS 164.020(3)

STATUTORY AUTHORITY: KRS 13A.100, 164.020(3), 164.030, 164.284

NECESSITY AND FUNCTION: Admission requirements shall be established by the institutions in keeping with adopted policies of the Council on Higher Education. Pursuant to KRS 164.020(3) the council approves the minimum qualifications for admission to the public institutions of higher education. It is the intent of the council that all Kentucky residents shall have available to them an opportunity for higher education appropriate to their interests and abilities. This administrative regulation sets forth the minimum standards and policies of the council related to admission at state-supported institutions of higher education.

Section 1. Definitions. (1) The term "adult student" means a student who is twenty-one (21) years of age or older.

(2) The term "approved unit" means a course of study included in the "Program of Studies for Kentucky Schools: Grades K-12".

(3) The term "nontraditional student" means a student twenty-five (25) years of age or older.

Section 2. General. (1) Students from other states and countries will be accepted by Kentucky public institutions providing that nonresident enrollment does not inhibit the opportunities of Kentucky residents to benefit from the facilities provided. Public institutions of higher learning may establish additional admission criteria that are in compliance with council policy established pursuant to KRS 164.020(3).

(2) The American Association of Collegiate Registrars and Admissions Officers' "Transfer Credit Practices of Educational Institutions" shall serve as a reference for the acceptance of transfer credits. Generally, a student dismissed from a college or university shall not be accepted at a Kentucky public institution for the semester

following his dismissal. Failure to report enrollment at another institution may result in dismissal and loss of credits earned.

(3) The Council on Higher Education is concerned that a student's transfer from one (1) institution to another be as smooth as possible. It shall be the responsibility of all public institutions to assure that the student is adequately counseled concerning transfer of credit. Consistent with the community college objective of a two (2) year curriculum, transfer from community colleges is normally expected at the completion of requirements for the associate degree. Transfer prior to that time, however, may be advisable in specialized programs.

Section 3. Minimum Qualifications for Institutional Admission as First-time Freshmen. (1) Kentucky residents who have graduated from public high schools or certified nonpublic high schools (i.e., high schools adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education), who have taken the American College Testing Assessment (ACT), and who will enroll in college classes for the first time following graduation from high school are generally granted admission to community colleges and community college-type programs at each university. The Career Planning Program Level II (CPP-II) or the ASSET testing program may be substituted for the ACT requirement for adult students, if the institution believes either of these testing instruments is better suited to the needs of adult students.

(2) Kentucky residents who have graduated from public high schools or certified nonpublic high schools (i.e., high schools adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education), who have taken the ACT, who have completed the minimum educational preparation, and who will enroll in college classes for the first time following graduation from high school have fulfilled the minimum requirements for admission to baccalaureate programs at each university. Each institution may accept the Scholastic Aptitude Test (SAT) in lieu of the ACT for resident and nonresident applicants in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs. Each university may establish additional admission criteria to supplement these minimum requirements.

(3) Kentucky residents who have earned a high school equivalency certificate (GED) or who are graduates of noncertified nonpublic high schools (i.e., nonpublic high schools not adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education) may be admitted to community colleges or community college-type programs at each university upon completion of the ACT. The Career Planning Program Level II (CPP-II) or the ASSET testing program may be substituted for the ACT requirement for adult students, if the institution believes either of these testing instruments is better suited to the needs of adult students. These same individuals may be admitted to baccalaureate programs at each university by meeting the minimum requirements specified in subsection (2) of this section. Completion of the minimum educational preparation may be validated through the submission of ACT area scores which are deemed adequate by each university. Each university may establish additional admission criteria to supplement these minimum requirements.

(4) Nonresidents must meet the same minimum qualifications for admission as Kentucky residents as stated in subsections (1) through (3) of this section and at least one (1) of the following conditions in order to be admitted to state institutions:

(a) Graduate in the top fifty (50) percent of their high school class;

(b) Achieve a composite score at the 50th percentile or above for all students taking the ACT or the SAT nationally (the ACT is the preferred admission test for Kentucky public institutions, and applicants are encouraged to take the ACT; however, each institution may accept the SAT in lieu of the ACT for resident and nonresident applicants in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs); or

(c) Demonstrate through other accepted measures the ability to pursue the college academic program without substantial remedial aid.

(5) If, under extenuating circumstances, students are admitted conditionally without having fulfilled the testing requirement, the students must take the ACT to fulfill this requirement during the first semester of enrollment.

Section 4. Minimum Educational Preparation. (1) Effective for the fall semester of 1987, applicants who have satisfied the minimum qualifications for institutional admission as first-time freshmen and have successfully completed twenty (20) or more approved high school units including the following minimum academic preparation requirements are eligible for admission to baccalaureate programs at each university. Each university may establish additional requirements to supplement this minimum educational preparation.

(a) Four (4) units of high school study in English, specifically, including English I (2301), English II (2302), English III (2303), and English IV (2304) or AP English (2307 or 2308).

(b) Three (3) units of high school study in mathematics, specifically including Algebra I (2710), (2722) or (both 2720 and 2721) or Algebra II (2711 or 2723); Geometry (2712 or 2735 or 2732), and one (1) additional mathematics elective. Beginning in 1990-91, the mathematics elective will be limited to predetermined courses which are identified in the "Program of Studies for Kentucky Schools: Grades K-12" published by the Kentucky Department of Education. Effective with admissions for the fall semester of 1995, the three (3) required units of high school study in mathematics shall include Algebra I (2710 or 2722 or 2751); Algebra II (2711 or 2723); and Geometry (2712 or 2732 or 2735). This mathematics requirement also may be met by completing the integrated mathematics series consisting of three (3) units (2756, 2757, and 2758).

(c) Two (2) units of high school study in science, specifically including either Biology I (2517) or Chemistry I (2521) or Physics I (2532), and one (1) additional science elective. At least one (1) of the science courses must be a laboratory course. Beginning in 1990-91, the science elective will be limited to predetermined courses which are identified in the "Program of Studies for Kentucky Schools: Grades K-12". Effective with admissions for the fall semester of 1995, the two (2) required units of high school study in science shall include Biology I (2517) and either Chemistry I (2521) or Physics I (2532), at least one (1) of which shall be a laboratory course.

(d) Two (2) units of high school study in social studies, specifically including World Civilization (2246) and U.S. History (2243) or AP American History (2244).

(e) In addition, college-bound students are encouraged to take, as part of their elective course selections, additional coursework in mathematics, sciences, foreign languages, arts, and computer literacy. Substitutions cannot be made for any course which is identified by a specific program of studies number unless the course in question has been deemed equivalent in content by the Council on Higher Education in consultation with the Department of Education. A waiver of a required precollege curriculum course may, however, be justified if:

1. A given student's handicapping condition is verified through appropriate documentation;

2. The school district superintendent (or designee) verifies that a student's handicapping condition will prevent the student from completing the course in question; and

3. Another course in a closely related area can be substituted for the course that cannot be completed.

(2) Course selections are tied to the "Program of Studies for Kentucky Schools: Grades K-12" and the individual course descriptions contained in that document. Adjustments in the minimum educational preparation for college will occur as changes are made in the program of studies. For guidance in the selection of specific

courses, counselors should consult the program of studies and Council on Higher Education materials on the precollege curriculum.

(3) It is the responsibility of each institution of higher education to determine whether an applicant has met these minimum educational preparation requirements.

(4) Effective with admissions for the fall semester of 1992, all students admitted with baccalaureate-degree status to universities shall be subject to the precollege curriculum as established in this section. Excluded from this requirement shall be nontraditional students and students entering baccalaureate- degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale. Also excluded from this requirement shall be active duty military personnel, their spouses, and their dependents. Specifically subject to this requirement are the following: first-time freshmen pursuing a baccalaureate degree with or without a declared major; students converting from nondegree status to baccalaureate-degree status; students changing from certificate or associate-degree level to baccalaureate-degree level; and students who, transferring from other institutions, have been admitted to baccalaureate-degree status by the receiving institution. All degree-seeking students shall be assigned a degree-level code.

Section 5. Conditional Admissions Qualifications. (1) Subject to the requirements and limitations established by the Council on Higher Education, each university shall have the option of admitting conditionally first-time freshman applicants to baccalaureate programs who have not met the minimum educational preparation qualifications for admission. Beginning in the fall semester of 1987, each university may grant exceptions to the minimum educational preparation qualifications and admit conditionally each academic term a maximum of twenty (20) percent of the total number of applicants admitted to baccalaureate programs as first-time freshmen. First-time freshmen admitted conditionally shall remove or otherwise satisfy all deficiencies regarding the minimum educational preparation in a manner and time period established by the enrolling university.

(2) Effective with the fall semester of 1994, each university enrolling students under the conditional admission provision of this policy shall admit conditionally each academic term not more than five (5) percent of a base figure. The transition from twenty (20) percent to five (5) percent shall be initiated as follows: beginning with the fall semester of 1992, each university shall admit conditionally each academic term not more than fifteen (15) percent of a base figure; and, beginning with the fall semester of 1993, each university shall admit conditionally each academic term not more than ten (10) percent of a base figure. The base figure shall be the average number of students reported as enrolled with baccalaureate-degree status over the preceding four (4) years. Nonresident students who failed to take world civilization while in high school shall not be reported or treated as having a precollege curriculum deficiency and shall not be subject to conditional admission on this basis.

(3) By January 1, 1992, each university shall submit to the Council on Higher Education for review and approval its policy covering the removal of precollege curriculum course deficiencies for students admitted conditionally. These policies shall apply to admissions beginning with the fall semester of 1992 and shall include the following components and conditions:

(a) Precollege curriculum course deficiencies in English and mathematics should be removed as soon as possible after enrollment, and shall be removed before students earn twenty-four (24) hours of degree credit. Students failing to comply with this condition of admission shall be prohibited from enrolling in additional degree-credit courses until the required corrective measures have been completed.

(b) Courses used to remove precollege curriculum deficiencies in English and mathematics shall not apply toward graduation credit.

(c) Students who have not completed the required courses in English and mathematics, but who score at or above the 60th percentile on the relevant portion of the ACT or SAT, shall be considered as having demonstrated a proficiency in the subject and shall not be assessed as deficient on this basis.

(d) Removal of precollege curriculum deficiencies in science and social studies shall be required before students complete twenty-four (24) hours of degree credit. The institutions shall stipulate the manner in which deficiencies shall be removed.

(e) University policies shall specify how the removal of deficiencies will be monitored and enforced.

(4) Although not subject to the precollege curriculum for admission purposes, students enrolled in community colleges or community college-type programs in universities shall be assessed and reported as to their precollege curriculum status effective with admissions for the fall semester of 1992. Students with precollege curriculum deficiencies shall remove deficiencies subject to the same requirements and conditions as baccalaureate students who are admitted conditionally. By January 1, 1992, individual community colleges or the University of Kentucky Community College System shall submit their policies or its policy covering the removal of precollege curriculum course deficiencies to the Council on Higher Education for review and approval. By January 1, 1992, universities shall submit their policies applicable to community college-type students to the Council on Higher Education for review and approval, if these policies differ from their policies for baccalaureate students admitted conditionally.

Section 6. Special Students. (1) Applicants of superior ability, as demonstrated by exceptional academic achievement, high ACT scores, and social maturity, may be granted early admission to the freshman class.

(2) At the discretion of the institution, applicants unable to meet college entrance requirements may be admitted to college classes for which they are qualified.

(3) Kentucky residents sixty-five (65) or older who are admitted to state-supported institutions shall have all registration and tuition charges waived. However, an institution may limit admission of these students if classes are filled, or if their admission necessitates additional classes.

Section 7. Admission with Advanced Standing. (1) Applicants who have attended another accredited college or university may be admitted with advanced standing in accordance with admission requirements established by each institution. An institution may have additional requirements for nonresidents.

(2) Lower division academic courses offered for undergraduate credit at any accredited Kentucky community college are transferable for academic credit to state-supported universities. Lower division academic courses are those offered for undergraduate credit at the freshman and sophomore level or normally counted toward requirements for an associate degree. Usually numbered 100 to 299, these are introductory in nature and require no significant prerequisites. Determination of course level shall be made by the governing boards of the public universities and filed with the Council on Higher Education.

(3) The number of semester hours earned at the community college level which will be applied toward meeting requirements for a baccalaureate degree will depend upon the degree being pursued and the transfer practices of the receiving institution. In cases where educational objectives have changed, students may take additional courses at a community college after having completed the associate degree requirements. In this event, the college to which the student plans to transfer should be consulted.

(4) Although each public university has the responsibility for determining its degree requirements, it normally takes two (2) additional academic years for a community college transfer student to complete baccalaureate degree requirements.

(5) Credits presented from institutions not accredited may be accepted only when validated by advanced work at the receiving

institution or by examination at the discretion of the institution.

Section 8. General Policy on Nonresident Enrollment. Institutions which waive the nonresident surcharge for nonresident students will continue to count those students as nonresident students for purposes of this policy and reporting to the council.

JOE BILL CAMPBELL, Chairman
GARY S. COX, Executive Director
APPROVED BY AGENCY: April 20, 1992
FILED WITH LRC: May 13, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 1992, at 10 a.m. at the Council on Higher Education Conference Room, 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 1992, five days prior to the meeting, 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: Debbie McGuffey, Council on Higher Education, 1050 U.S. 127 South, Suite 101, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Debbie McGuffey

(1) Type and number of entities affected: This amendment makes minor adjustments to a regulation which affects all 8 of the state-supported universities, the 14 community colleges within the UK Community College System, secondary schools preparing students for college, and all applicants for admission to the freshman class. Via establishment of precollege curriculum requirements, this regulation provides guidelines for undergraduate admission to the state-supported institutions of higher education in Kentucky. As stipulated in the existing regulation, completion of the precollege curriculum is not a condition of admission to baccalaureate-degree status for nontraditional students (those 25 years of age or older) and for students who enter baccalaureate-degree status with 24 or more semester credit hours with a grade point average of at least 2.00 on a 4.00 scale. As amended, the regulation also will exempt from precollege curriculum requirements all active duty military personnel, their spouses, and their dependents. This exemption is precipitated by the difficulty experienced by the universities and community colleges in retrieving the high school transcripts of military personnel given the latter's geographic diversity and rapid turnover of assignments. Also as stipulated in the existing regulation, substitutions for designated precollege curriculum courses cannot be made unless the proposed substitutions have been deemed equivalent in content by the Council on Higher Education in consultation with the Department of Education. As amended, the regulation allows waivers for handicapped students of required precollege curriculum courses if: a) a given student's handicapping condition is verified through appropriate documentation; b) the school district superintendent (or designee) verifies that a given student's handicapping condition will prevent the student from completing the course in question; and c) another course in a closely-related area can be substituted for the course that cannot be completed. This amendment is recommended so as not to preclude any handicapped person's successfully completing the precollege curriculum.

(a) Direct and indirect costs or savings to those affected:

1. First year: Military personnel, their spouses, and their dependents will be spared the costs entailed in taking remedial courses solely for the purpose of removing precollege curriculum deficiencies.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No impact.

(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: No impact.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is an amendment to an existing regulation. Therefore, no alternative methods were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. As stipulated in the regulation, completion of the precollege curriculum is not a condition of admission to baccalaureate-degree status for nontraditional students (those 25 years of age or older), for students who enter baccalaureate-degree status with 24 or more semester credit hours with a grade point average of at least 2.00 on a 4.00 scale, or, as amended, for active duty military personnel, their spouses, or their dependents. Completion of the precollege curriculum is not a condition of admission to community colleges and community college-type programs at universities, although community college students, unless otherwise exempt, are assessed as to their compliance with the precollege curriculum and are required to remedy any deficiencies once enrolled in college.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:010. Contributions and interest rates.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, Acts 1992, c. 462, Part III, Section 16

STATUTORY AUTHORITY: KRS 16.576, 16.640, 61.559, 61.645, 78.780

NECESSITY AND FUNCTION: KRS 16.645, 61.565 and 78.545 require the Board of Trustees of Kentucky Retirement Systems to determine the employer contribution rate based on an actuarial valuation. On November 21, 1991, the Board of Trustees of Kentucky Retirement Systems accepted the results of an actuarial valuation and adopted an employer contribution rate of 8.66% for the Kentucky Employees Retirement System (KERS) nonhazardous employees and 17.55% for hazardous duty employees; adopted an employer contribution rate of 8.82% for the County Employees Retirement System (CERS) nonhazardous employees and 18.47% for hazardous duty employees; and adopted an employer contribution rate of 21.84% for the State Police Retirement System (SPRS). The Acts 1992, c. 462, Part III, Section 16, provides that, notwithstanding KRS 61.565, it is the intent of the General Assembly that from July 1, 1992 through June 30, 1994 the employer contribution rate for the KERS shall be no more than 7.65% for nonhazardous duty employees and 15.05% for hazardous duty employees; and for the same period the employer contribution for employees of the SPRS shall be no more than 19.57%. KRS 61.552 requires the board to adopt a rate of

interest payable on a recontribution of refund. KRS 16.560, 61.575 and 78.640 provide that the board may determine the rate of interest payable on the members' contribution account. KRS 61.670 provides that the board shall adopt such actuarial tables as are necessary for the administration of the system. This regulation sets the employer contribution rates, and rate of interest on a recontribution of refund and member contribution account and establishes the actuarial tables for computation of retirement allowances for members of the KERS, CERS and SPRS. The Board of Trustees of Kentucky Retirement Systems perceives a conflict between KRS 61.565 and Acts 1992, c. 462, Part III, Section 16. This regulation establishes the employer contribution rates in a manner consistent with the provisions of KRS 61.565, which the Board of Trustees of Kentucky Retirement Systems feels compelled to follow until such time as the conflict is resolved. A copy of the opinion upon which this decision was based is attached. ~~[Kentucky Employees Retirement System (KERS), County Employees Retirement System (CERS) and State Police Retirement System (SPRS).]~~

Section 1. The employer contribution rate payable by a participating agency applicable to creditable compensation effective July 1, 1992 ~~[1991]~~ shall be as follows:

KRS 61.565 State Police Retirement System - 21.84 ~~[19.57]~~%
KRS 61.565 Kentucky Employees Retirement System - 8.66 ~~[7.65]~~%
KRS 61.565 County Employees Retirement System - 8.82 ~~[7.95]~~%
KRS 61.592 Kentucky Employees Retirement System - 17.55 ~~[15.05]~~%
KRS 61.592 County Employees Retirement System - 18.47 ~~[16.10]~~%

Section 2. Effective July 15, 1988, the interest rate on a recontribution of refund as provided under KRS 61.552 shall be as follows:

(1) For time elapsed from date of refund eight (8) percent compounded annually.

(2) The interest rate on recontribution of refund made by an employee who has been reinstated by order of the Personnel Board or by court order or by order of the Human Rights Commission shall be at the rate of zero percent, if the refund is recontributed within a reasonable period of time.

Section 3. The legal rate of interest as referenced in Section 7 of regulation 200 KAR 12:010 (a regulation relating to computing back pay after reinstatement) shall be the actuarial assumed interest rate set forth in Section 1 of 105 KAR 1:040.

Section 4. Interest creditable on a member's accumulated contributions in accordance with KRS 16.560, 61.575, and 78.640 shall be at the rate between two and one-half (2 1/2) percent and six (6) percent as determined by the board.

Section 5. Reduction factors to be applied to determine immediate annuity equivalent to annuity deferred to Normal Retirement age under KRS 16.577, 16.578, 61.595, 61.640 and 61.680 shall be as provided in Table G, unless the provisions of subsections (1) through (5) of this section are applicable and result in a higher percentage payable:

(1) A SPRS, CERS Hazardous or KERS Hazardous duty member who is age fifty (50) or older and would attain twenty (20) years of service (fifteen (15) years of which would be current service) prior to age fifty-five (55), if his employment had continued shall have his retirement benefit computed based on the appropriate factors as follows:

TABLE A

Years Required to Complete 20 Years Service	Percentage Payable
1	94.5%
2	89.0%
3	83.5%
4	78.0%
5	72.5%

(2) A KERS or CERS nonhazardous member who is age fifty-five (55) or older and would attain twenty-seven (27) years of service (fifteen (15) years of which would be current service) prior to age sixty-five (65) if employment were continued shall have benefits computed using the appropriate factor as follows:

TABLE B

Years Required to Complete 27 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

(3) A KERS or CERS nonhazardous member who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) with twenty-five (25) or more years of service (at least fifteen (15) of which are current service) shall have benefits computed using the appropriate factor as follows:

TABLE C

Years Required to Complete 27 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%

(4) A KERS or CERS nonhazardous member with less than twenty-five (25) years of service who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on TRS, SPRS, CERS Hazardous or KERS Hazardous Early retirement eligibility, and would have attained twenty-seven (27) or more years of service (fifteen (15) of which would be current service) on or before reaching his 65th birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table B based on the number of years required to complete twenty-seven (27) years of service and then multiply this result by the percentage payable as determined from Table D based on said member's age at the time of death or early retirement.

TABLE D

Years Prior to Age 55	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

(5) A SPRS, CERS Hazardous or KERS Hazardous member who dies prior to age fifty (50) and would have attained twenty (20) or more years of service (fifteen (15) of which would be current service) on or before reaching his 55th birthday, if employment were continued, shall have benefits payable as determined from Table E based on the number of years required to complete twenty (20) years of service and then multiply this result by the percentage payable as determined from Table F based on said member's age at the time of death.

TABLE E

Years Required to Complete 20 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

TABLE F

Years Prior to Age 50	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

TABLE G

Early Age	Normal Retirement Age 65	55
64	95.0%	
63	90.0%	
62	85.0%	
61	80.0%	
60	75.0%	
59	71.0%	
58	67.0%	
57	63.0%	
56	59.0%	
55	55.0%	
54	51.3%	94.5%
53	47.9%	89.0%
52	44.9%	83.5%
51	42.1%	78.0%
50	39.5%	72.5%
49	37.1%	68.8%
48	34.9%	65.2%
47	33.0%	61.7%
46	31.3%	58.2%
45	29.9%	54.7%
44	28.7%	51.3%
43	27.6%	47.9%
42	26.7%	44.9%
41	25.8%	42.1%
40	25.1%	39.5%
39	24.4%	37.1%
38	23.8%	34.9%
37	23.2%	33.0%
36	22.5%	31.3%
35	21.9%	29.9%
34	21.2%	28.7%
33	20.6%	27.6%
32	20.0%	26.7%
31	19.5%	25.8%
30	19.0%	25.1%
29	18.5%	24.4%
28	18.0%	23.8%
27	17.5%	23.2%
26	17.0%	22.5%
25	16.5%	21.9%

The member's exact age in years and months shall be determined and the above factors shall be used to extrapolate in order to determine the appropriate factors.

(6)(a) Benefits paid in the event of death prior to retirement pursuant to subsection (1) through (5) of this section, shall be: determined by "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors"; and (2) reduced as required by KRS 61.640.

(b) "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors", effective July 14, 1990 are incorporated by reference in this administrative regulation. These factors may be read or copied at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: May 13, 1992

FILED WITH LRC: May 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 22, 1992, at 10 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1992, five days prior to the meeting, 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: Pamela S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamela Johnson

(1) Type and number of entities affected: This regulation affects 1,184 state and local government agencies.

(a) Direct and indirect costs or savings to those affected:

1. First year:

System	Cost as % of Payroll	Cost in Dollars
KERS nonhazardous	1.01%	$9.3 million
KERS hazardous	2.50%	$1.6 million
CERS nonhazardous	.87%	$6.6 million
CERS hazardous	2.37%	$3.0 million
SPRS	2.27%	$.7 million

2. Continuing costs or savings: The contribution requirement is subject to annual actuarial analysis which may result in either an increase or decrease each year.

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

(b) Reporting and paperwork requirements: There is no change to reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There is none.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no change to reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This regulation may require an adjustment of 1992-93 personnel budgets for those agencies which have not based their budget on these contribution rates. Agencies were informed of these proposed rates in December 1991 following adoption by the Board of Trustees in November 1991.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The funding method and determination of contribution rates is required by KRS 61.565.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Acts 1992, c. 462, Part III, Section 16, the Biennial Budget, contains a statement of intent that KERS and SPRS employer contribution rates remain at current levels without increase for two years notwithstanding the provisions of KRS 61.565.

(a) Necessity of proposed regulation if in conflict: The Board of Trustees, based on the opinion attached to this regulation, believes it is their fiduciary duty to set the employer contribution rates in accordance with KRS 61.565 until any conflict between that section and the Biennial Budget is resolved.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The Board of Trustees was unable to harmonize the conflict between the provisions of Acts 1992, c. 462, Part III, Section 16 and KRS 61.565. Accordingly, the only alternative was to choose which of the two conflicting provisions the Board of Trustees was compelled to follow.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. The contribution rates are tiered to reflect the costs and assumptions of the hazardous and nonhazardous groups within the three retirement systems.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects all local government agencies participating in the County Employees Retirement System (approximately 900).

3. State the aspect or service of local government to which this administrative regulation relates. This regulation sets the employer contribution rates in accordance with KRS 61.565 to fund the retirement benefits of full-time employees.

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 (+/-):

Nonhazardous employees +.87% of payroll $6.6 million

Hazardous employees +2.37% of payroll $3 million

Other Explanation: This increase in the contribution rates for CERS is required under KRS 61.565 to fund the benefits provided by KRS 78.510 to 78.852. Benefit costs increased actuarially due to higher than assumed salary increases and the continued growth in the medical insurance cost.

KENTUCKY STATE BOARD OF EXAMINERS AND REGISTRATION OF LANDSCAPE ARCHITECTS
(Proposed Amendment)

201 KAR 10:050. Fees.

RELATES TO: 323A.060, 323A.100

STATUTORY AUTHORITY: KRS 323A.060, 323A.210

NECESSITY AND FUNCTION: The board is authorized by KRS 323A.060 to fix by rules the fees for services and this regulation is intended to establish such fees.

Section 1. Fees. The following shall be the fees to be charged by the board and no such fee shall be refundable:

(1) Renewal fees: $100 [~~sixty (60) dollars~~]. The secretary shall notify all license holders of the renewal dates on May 1 of each year.

(2) Duplicate certificate: ten (10) dollars.

(3) For issuance of original license certificate: $200 [~~sixty (60) dollars~~].

(4) For restoration of an expired license: restoration fee of $200 [~~125~~] and a $200 [~~sixty (60) dollar~~] renewal fee with penalty as provided in KRS 323A.100.

(5) For reinstatement of a revoked license: $200 [~~thirty five (35) dollars~~].

(6) For issuance of a license on reciprocity basis: $200 [~~150~~].

(7) For an examination: to be determined by the board each year not to exceed $100 per section.

MARK E. HERMAN, President

APPROVED BY AGENCY: March 30, 1992

FILED WITH LRC: May 13, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on these proposed regulations will be held on June 25, 1992 at the hour of 10 a.m. EDT at the offices of the Kentucky State Board of Examiners and Registration of Landscape Architects, Route 3, 96-5, Millville Road, Frankfort, Kentucky, 40601. Any person interested in commenting on these regulations at that hearing should contact Mr. Larry S. Perkins, Executive Director, Kentucky State Board of Examiners and Registration of Landscape Architects, Route 3, 96-5, Millville Road, Frankfort, Kentucky 40601 in writing by June 20, 1992.

REGULATORY IMPACT ANALYSIS

Agency Contact: Larry S. Perkins

(1) Type and number of entities affected: All licensees.

(a) Direct and indirect costs or savings to those affected: Increase in license renewal fees, reinstatement fees.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: Minimal

(2) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: Slight increase.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is not applicable in this case because all licensees and applicants are treated alike.

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

301 KAR 2:111. Deer and turkey hunting on special areas.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to the deer gun and archery season and the turkey season on special areas. This regulation is necessary for the continued protection of the species listed herein, and to insure a permanent and continued supply of the wildlife resource for present and future residents of the state. The function of this regulation is to provide for the prudent taking of deer and turkey within reasonable limits based upon an adequate supply. This amendment is necessary to establish current season dates and hunting rules.

Section 1. Deer and turkey Season on Special Areas. Unless otherwise stated, the provisions of 301 KAR 2:170 and 301 KAR 2:140 apply. These areas are open [~~only on the dates specified below~~] for deer or turkey hunting only on the dates specified below. Hunters on these areas shall possess [~~produce~~] the signature portion of a valid deer permit. A special purpose tag to place on harvested [~~the~~] deer shall be issued except on the Westvaco area.

(1) Land Between the Lakes Wildlife Management Area (LBL) located in Trigg and Lyon Counties. For LBL general hunting rules refer to 301 KAR 2:050.

(a) Deer archery hunts: any white-tailed deer[~~.~~] the last Saturday in September through October 22 [~~24~~], October 27 [~~29~~] through November 12 [~~7~~] and December 15 [~~14~~] through December 31.

(b) Quota [~~deer~~] hunt. [~~1~~]. Quota gun hunt: white-tailed or fallow deer and sex of deer as specified on permit[~~.~~] November 28-29 [~~16-17, 19-20, and 23-24~~].

[~~2. Quota archery hunts: any white-tailed deer in that portion of the Environmental Education Area designated as hunt area 17. October 26-27, November 16-17 and 23-24.~~]

(c) [~~(d)~~] Quota [~~deer gun hunt for~~] youth[~~s only~~] hunt: one (1) white-tailed deer or fallow of either sex as specified on permit on October 24-25 [~~26-27~~]. Statewide regulations apply and participants shall possess an LBL Youth Hunt Permit. [~~Hunting is restricted to persons at least ten (10) years of age but who have not reached their 16th birthday. Each youth shall be accompanied by an adult and shall have a valid Kentucky hunting license and state deer permit, an LBL Youth Hunt Permit and a state approved Hunter Safety Certificate.~~]

(d) [~~(e)~~] Bag limits. The deer bag limit for the Kentucky portion of LBL is two (2) deer; except that no more than one (1) deer shall be taken during any quota gun or quota archery hunt, and no more than one (1) deer shall be taken during the deer archery hunt.

(e) [~~(c)~~] Turkey archery hunts: one (1) turkey of either sex during the deer archery hunts as specified in subsection (1)(a) of this section. Statewide regulations apply. [~~Each hunter shall have a valid wild turkey permit in possession, and when a turkey is taken, it shall be tagged with the fall portion of the state permit.~~]

(f) Areas open and closed to hunting. State line to Barkley Canal is open to hunting except for developed public use areas (unless posted as open), safety zones and areas posted as closed.

(g) [~~Youth and~~] Quota hunt applications. Hunters shall be selected by a drawing. Application forms are available from, and shall be submitted to, Quota Deer Hunt, Land Between the Lakes, Golden Pond, Kentucky 42231. Completed applications shall be postmarked no later than 3:30 p.m. on the last Wednesday in July. If unfilled quotas exist after the regular drawing, quotas shall be filled by issuing permits on a first-come, first- served basis at the Land Between the Lakes administrative office.

(h) Checking in and out.

1. Quota gun hunters. All hunters, including those camping in LBL, shall check in prior to hunting, but shall not be required to check out unless a deer is harvested. Hunters shall check in between 8 a.m. and 6 p.m. the day before the hunt, or after 4 a.m. on hunt days. Check stations will be open from 4 a.m. to 6:30 p.m. (CST) on hunt days.

2. Archery hunters. Archery hunters are not required to check in or out except on quota hunts. All deer and turkey harvested shall be checked out.

(i) Permits and tagging requirements.

1. Permits. An LBL hunter use permit shall be required for each hunter participating in the deer and turkey archery season and an LBL computer card permit is required for each hunter participating in the quota gun or quota archery deer hunts.

2. Tags. All harvested deer and turkey shall be tagged with an LBL permanent game tag before being removed from the area. Permanent LBL game tags shall be attached to all harvested deer and turkey at LBL check stations. The LBL permanent game tag shall be used in place of the Kentucky Department of Fish and Wildlife Resources official game check card as proof of check in and for taxidermy purposes.

(j) Prohibited weapons: crossbows.

(k) The taking of coyotes. Hunters participating in the quota gun hunts may take coyotes if they possess [~~hunters have not yet taken their deer and have~~] a valid deer tag.

[~~(l) For LBL general hunting rules refer to 301 KAR 2:050.~~]

(2) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. There will be no hunting on Tuesdays and Wednesdays except when Tuesday or Wednesday is a federal holiday or as follows: December 15-16 and 22-23 [~~16-17, 23-24, 26, and 30-31~~], then hunting shall be permitted. There will be no hunting on December 25 and January 1.

(a) Deer archery and muzzle-loading rifle season. Any deer: September 26 [~~28~~] through October 5 [~~11~~].

(b) Youth deer shotgun hunts [~~season~~]: during the months of

September, October, November and December [~~September 28 29 and October 5 6~~] on selected areas. Any deer. For persons aged ten (10) through sixteen (16) who shall be accompanied by an adult. Shotguns only. [~~Each youth shall have a valid hunter safety certificate. Shotguns twenty (20) gauge or larger shall be used.~~]

(c) Deer gun and archery season. Any deer: October 8 [~~12~~] through 23 [~~25~~] and December 12 [~~14~~] through December 31 on selected areas.

(d) Wild turkey archery season: Any turkey. Statewide regulations [~~season limits~~] apply. For deer hunters using archer equipment September 26 through October 5. [~~September 28 through October 11. Only those turkey hunters who possess valid unfilled deer and turkey hunting permits may hunt turkey at this time.~~]

(e) Wild turkey shotgun only season: any turkey. October 17 [~~26~~] through November 23 [~~4~~].

(f) White turkey season: any white turkey. The post bag limit is one (1) white turkey. Statewide and post season limits and tagging requirements on wild turkey do not apply to the taking of white turkey. White turkey may be taken during any open hunting season on Ft. Campbell. Only those hunters who possess valid unfilled deer tags may hunt white turkey during deer season and only those possessing turkey hunting permits may hunt white turkey during turkey season.

(g) Deer bag limits. The bag limit for Kentucky license holders [~~hunting on Fort Campbell~~] shall be two (2) deer taken by either gun or bow. Prior to November 15, once a hunter has taken his first deer on Fort Campbell, he shall be ineligible for weekend drawings (i.e., he may only hunt on Mondays, Thursdays, or Fridays or on weekend standby) until the reopening of deer hunting on December 12 [~~14~~]. Then if he has not harvested his limit he shall be eligible for the weekend drawing until he has taken his limit.

(h) Permits and tagging requirements.

1. Deer hunters shall purchase a fifteen (15) dollar post hunting and fishing permit which includes a Fort Campbell deer tag, at building #6645. All Fort Campbell deer hunters shall also have the signature portion of a valid Kentucky deer permit in their possession. [~~Persons sixty-five (65) years of age or older are not required to purchase a post hunting and fishing permit.~~

~~2. All deer taken on post by Kentucky hunters shall have a valid special purpose Kentucky deer tag attached to the carcass. All successful hunters shall fill out an official game check card to be kept in possession until the deer is processed.~~]

(i) Prohibited and permitted weapons. Handguns and crossbows are prohibited. Rifles shall be permitted only in areas west of Palmyra Road. All rifles shall be equipped with telescopic sights. Hunting arrows shall not be less than twenty-four (24) inches in length, equipped with broadhead barbless blades not less than seven-eighths (7/8) inch nor more than two (2) inches wide for single two (2) edged blades, or not more than three (3) or more blades. The minimum weight for all broadheads is 100 grains.

(j) Hunter safety certificate. All deer hunters between the ages of ten (10) and eighteen (18) shall possess a valid hunter safety certificate.

(3) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties.

(a) Deer archery hunt: any deer. First Saturday in October through November 15 and December 21 through January 3 [~~17~~].

(b) Deer gun hunt: any deer November 21-22, November 28-29, December 5-6, and December 19-20[~~, November 30 December 1, December 7 8, and December 14 15~~].

(c) Bag limits. The bag limit is two (2) deer, only one (1) deer shall be taken by gun and one (1) by bow.

(d) Applications. Separate applications are required for archery and gun hunts. No more than five (5) hunters shall apply on any one (1) application. Applications shall not be postmarked earlier than the third Saturday in August or later than August 31.

1. Archery hunts. Civilians not working on post may apply for weekend archery hunts by mail. [~~No more than five (5) hunters shall apply on any one (1) application. Applications shall not be postmarked earlier than the second Saturday in August or later than August 31 to be considered for the drawing for weekend archery hunts.~~] Applicants drawn shall be assigned one (1) weekend of archery hunting. Weekday archery hunting shall be on a first-come, first-served basis. Sign-up for weekday hunts shall be made at least forty-eight (48) hours in advance at Hunt Control Headquarters Building 112 [~~1060~~].

2. Gun hunts. Civilians not working on post may apply by mail for a two (2) day gun hunt. [~~No more than five (5) hunters shall apply on any one (1) application. Applications shall not be postmarked earlier than the second Saturday in August or later than August 31 to be considered for a random drawing.~~] Hunters shall be assigned one (1), two (2) day hunting period. Hunters who have not harvested a deer and active duty military personnel who did not apply for the quota hunt may sign up on a first-come first-served basis for hunting on December 19-20.

3. Application procedure. All applications shall contain the type of hunt (gun or bow), names and addresses of each hunter, a self-addressed stamped envelope and an eighteen (18) [~~a fifteen (15)~~] dollar money order, certified check or cashier's check for each hunter, made payable to Treasurer of the United States. Mail applications to [~~Directorate of Engineering and Housing,~~] Hunt Control Office, Attn: ATZK-EHE, Fort Knox, Kentucky 40121-5000.

(e) Check station. All deer taken during the archery season shall be checked in at Building 112. Deer taken during the gun hunts shall be checked in at Building 7331 on 9th Avenue or attn: North Mt. Eden Rd Station. Successful hunters shall have the completed hunter portion of their game check card in their possession.

(f) Hunting hours: one-half (1/2) hour before sunrise until 5 p.m. local prevailing time. Hunters shall clear hunt control by 7 p.m.

(g) Weapons. Only breech-loading and muzzle-loading shotguns of twelve (12) gauge maximum and twenty (20) gauge minimum firing a single projectile, and muzzle-loading rifles of .38 caliber to .58 caliber firing a single projectile shall be permitted. Magazined shotguns shall be plugged to a three-shot capacity. Hunters shall have no more than ten (10) rounds of ammunition in possession for any one (1) hunting day.

(h) Hunter safety certificates. All deer hunters under the age of forty-five (45) [~~forty (40)~~] shall possess a valid hunter safety certificate.

[~~(i) Special clothing requirements. Gun hunters shall wear a solid hunter orange vest, jacket or coveralls and a hunter orange hat.~~]

(i) [~~(j)~~] Special equipment. All hunters shall possess a Fort Knox special hunting and fishing map and a flashlight.

(j) [~~(k)~~] Intoxicants. Intoxicants are prohibited in vehicles and hunting areas.

(k) [~~(l) Licenses, deer tags, and~~] Post permit. All persons deer hunting on the Fort Knox Military Reservation shall possess [~~a valid Kentucky Hunting License, deer permit and~~] a Fort Knox Deer Permit.

(4) Bluegrass Ordnance Depot Activity located in Madison County.

(a) Deer archery hunts: during the month of October and November.

(b) Deer gun hunts: during the month of November and December.

(c) Bag limits. The post bag limit is one (1) deer of the sex announced on the day of the hunt.

(d) Applications. Hunters may submit applications for archery or gun hunts. Applications for the drawings shall be made on a three (3) inch by five (5) inch card with only two (2) applicants [~~one (1) applicant~~] allowed per card. More than one (1) card per individual shall disqualify the applicant. When a maximum of two (2) people desire to hunt together, the required information shall be written on a single [~~individual~~] three (3) inch by five (5) inch card[~~s, stapled together,~~] and mailed in an envelope. [~~The upper right corner of each card shall state the name of the person the applicant desires to hunt with.~~] Each

applicant shall furnish name and address (including zip code), date of birth, telephone number and specify their [~~first and second~~] choice for shotgun or [~~gun and~~] archery hunting. Hunters, their hunting dates and areas shall be selected by a drawing. All envelopes shall be postmarked no earlier than August [~~September~~] 1 or later than August [~~September~~] 30 to be eligible for the drawing. Improper applications shall be discarded. A fifteen (15) dollars per person fee shall be charged for hunting payable on the assigned hunting date. Mail all applications to: Lexington- Bluegrass Depot, Attention: Land Manager, Lexington, Kentucky 40511-5010.

[~~(c) Age limit. No one under the age of twelve (12) shall hunt.~~]

(e) [~~(f)~~] Weapons. Only breech-loading shotguns are permitted. Only longbows, recurve and compound bows having a pull weight of forty (40) pounds or greater are permitted. Crossbows are prohibited.

(f) [~~(g)~~] Harvest quota. Hunting shall be discontinued whenever the designated deer harvest quota is reached or upon the direction of the Activity Commander.

(g) [~~(h)~~] Hunter safety certificates. All deer hunters born after January 1, 1970 shall possess a valid hunter safety certificate.

(5) Reelfoot National Wildlife Refuge located in Fulton county.

(a) Quota hunts: any deer beginning the last Saturday in October and the first and second Saturday in November and lasting for two (2) consecutive days each.

(b) Drawing. Only those persons selected by a drawing may participate in the quota hunts. If unfilled quotas exist after the regular drawings, quotas shall be filled by issuing permits on a first-come, first-served basis. Hunters shall hunt for a maximum of one (1) day only.

(c) Archery hunt: any deer October 11-20.

(d) Bag limits. The refuge bag limit is two (2) deer. Only one (1) deer shall be taken by gun.

(e) Check stations. All gun deer hunters shall check in and out at designated refuge check stations.

(f) All deer hunters shall [~~must~~] have purchased a ten (10) dollar refuge hunting permit.

(6) Westvaco public hunting areas. All persons hunting shall possess a valid Westvaco hunting permit.

(a) Persons shall not operate vehicles off designated roads.

(b) No person shall hunt from or place [~~build~~] a tree stand on Westvaco property [~~that is~~] within fifty (50) yards of a property line.

(c) No person shall ignite, feed or allow [~~build~~] an open fire on the area.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
BRENDA FRANK, Acting Secretary

APPROVED BY AGENCY: March 2, 1992

FILED WITH LRC: May 14, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1992 at 10 a.m. at the Department of Fish and Wildlife Resources Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by June 24, 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: An estimated 211,000 persons will participate in white-tailed deer hunting, and an estimated 10,000 persons will participate in wild turkey hunting. An unknown portion of these will avail themselves of the hunting opportunities offered on the federal installations spoken to in this regulation.

(a) Direct and indirect costs or savings to those affected: Involve the purchase of a state hunting license, one deer permit, and special hunting permits required by the administration of the federal installations. Indirect costs are determined by the individual hunter, depending on his level of participation.

1. First year: Persons participating in the deer hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for residents) and a deer permit ($17.50) unless exempt by regulations. Those participating in turkey hunting would be required to also purchase a turkey permit ($15).

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): An additional hunting fee is charged by Fort Knox, Blue Grass Ordnance Depot Activity, LBL, Reelfoot Refuge, Westvaco, and Fort Campbell.

(b) Reporting and paperwork requirements: Hunters will be asked to check their deer and turkey at a check station and fill out a tag denoting specific information about the deer and turkey taken. Hunters must complete applications for drawing hunts.

(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 promulgation and enforcement of the regulation.

1. First year: The estimated department cost associated with establishing and carrying out the provisions of this regulation is $2,500.

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: Deer and turkey hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $32 per day of hunting according to the 1990 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only 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 white-tailed deer and turkey populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: 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? Yes. Special seasons, limits and procedures are recognized for various federal installations based on deer densities and other use considerations.

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 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 and deer tags. This office receives a $.75 fee for selling licenses and deer or turkey tags. The county circuit courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:010. Certification of wastewater system operators.

RELATES TO: KRS 224.10-110, 224.73-110 [~~224.032, 224.135~~]
STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.10-110, 224.73-110 [~~224.032, 224.033, 224.045~~]
NECESSITY AND FUNCTION: The secretary is directed to adopt regulations applicable to certification of wastewater system operators. This regulation establishes standards for classification of wastewater systems; qualifications of applicants; examination procedures; duties of the Kentucky Board of Certification of Wastewater System Operators [~~board~~]; provisions relating to the issuance and [~~,~~] renewal [~~or revocation~~] of certificates; disciplinary actions; a fee schedule and other provisions necessary for certification of operators[~~; and other operational provisions related to the functions of the wastewater operators certification board~~].

Section 1. Definitions. The following terms shall have the meanings set forth below unless the context clearly indicates otherwise:

(1) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.

(2) [~~(1)~~] "Board" means the Kentucky Board of Certification of Wastewater System Operators.

(3) [~~(2)~~] "Cabinet" has the meaning given it in KRS 224.01-010. [~~means the Kentucky Natural Resources and Environmental Protection Cabinet.~~]

[~~(3) "Secretary" means the secretary of the cabinet.~~]

(4) "Certificate" means a certificate of competency issued by the secretary or his designated agent stating that the operator has met the [~~all~~] requirements for the specified operator classification as set by this regulation.

(5) "Certified operator" means a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of this regulation.

(6) [~~(5)~~] "Division" means the Division of Water[~~, Natural Resources and Environmental Protection Cabinet~~].

(7) [~~(6)~~] "Operator" means any [~~the~~] person involved in the operation of a wastewater system [~~having primary responsibility of a wastewater system or any portion thereof which may affect the performance of the system~~].

(8) [~~(7)~~] "Primary responsibility" means having the authority to conduct [~~or supervise~~] the procedures and practices necessary to insure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws and administrative regulations of the Commonwealth, or to supervise others in conducting these practices.

(9) "Secretary" has the meaning given it in KRS 224.01-010.

(10) [~~(8)~~] "Wastewater system" means sewage system as defined in KRS 224.01-010. [~~the system of pipes, structures, equipment and processes required to collect, carry, and treat domestic, or industrial wastewater, or both, including solids handling. The term "wastewater system" is synonymous and interchangeable with the term "sewage system."~~]

[~~(9) "Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities (ABC)" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems and state programs, and assists authorities in establishing new certification programs and upgrading existing ones.~~]

Section 2. General Provisions. (1) Each wastewater system shall be operated under the supervision of an individual holding a [~~current~~] Kentucky operator's certificate for at least the class of system [~~he or she~~] supervised. [~~Certified operators are required for the operation of all wastewater treatment facilities.~~]

(2) If the certified operator [~~with primary responsibility~~] is not physically present while a system is operating, the certified operator [~~he or she~~] shall be reasonably available. [~~Such~~] Availability shall be determined by the board and cabinet [~~on a case by case basis~~].

(3) Facilities whose classification changed from Class I to Class II as a result of revisions to Section 8 of this regulation as in effect on the effective date of this regulation shall employ a certified Class II or higher operator by January 1, 1994.

(4) Certificate display. If a wastewater system office is available at the wastewater treatment plant or within the sewer service area, the operator's certificate shall be prominently displayed on the wall.

(5) Wallet card. Certified operators shall carry the cabinet-issued wallet card showing current certification status while on duty.

Section 3. Duties of the Board. [~~(1)~~] In carrying out its responsibilities and with consideration given to the minimum standards and guidance of the ABC, the board may [~~shall among other things~~]:

(1) [~~(a)~~] Examine the qualifications of applicants and recommend qualified applicants to the cabinet for certification;

(2) Review and approve substitutions for education and experience requirements;

[~~(b) Recommend qualified applicants for certification by the cabinet.~~]

(3) [~~(c)~~] Review and provide comments to the cabinet on proposed wastewater treatment plant operator certification regulations; [~~or revisions to regulations dealing with wastewater treatment plant operator certification.~~]

(4) [~~(d)~~] Review and make recommendations to the cabinet on proposed training courses and seminars designed to provide continuing education to certified operators; [~~training materials and methods dealing with the certification of wastewater treatment plant~~

~~operators.~~]

(5) Review and assist the cabinet in the preparation of examinations;

[~~(e) Perform such other and further acts as may be necessary to carry out the duties and responsibilities as herein described.~~]

(6) [~~(f)~~] Review and provide comments to the cabinet on proposed fees for the training and certification of operators; [~~approve by the first of January of the first year of the renewal period the draft schedule of reasonable fees submitted by the cabinet.~~]

(7) Review the certification regulations of states which are seeking reciprocity with the Commonwealth; and

(8) Review evidence and advise the cabinet regarding disciplinary actions for certified operators who fail to comply with the applicable laws and regulations.

[~~(g) Provide for distribution of the approved fee schedule to all affected operators prior to the beginning of each renewal period.~~

~~(2) In carrying out its certification responsibilities, the board may establish minimum criteria and provide a general recommendation for certification for all applicants who exceed them.~~]

[~~Section 4. Application for Certification. (1) An operator desiring to be certified shall file application with the cabinet preceding examination on an application form provided by the cabinet.~~

~~(2) The executive secretary and treasurer of the board shall assemble all the information needed by the board or cabinet to determine eligibility of the applicant for examination and certification.~~

~~(3) The board or cabinet shall review applications and supporting documents, determine the eligibility of the applicant for examination and notify him or her of his or her status.~~]

Section 4. Application and [~~5.~~] Examinations for Certification. (1) Application. An individual desiring to be certified shall file an application with the cabinet and pay the applicable fee specified in Section 5 of this regulation. Applications shall be made on a form provided by the cabinet and incorporated by reference in Section 11 of this regulation. Applications shall not be filed with the cabinet until the individual has met the qualifications specified in this regulation.

(2) Examinations. The board and the cabinet shall be jointly responsible for preparation of the examinations which shall [~~to~~] be used in determining knowledge, ability and judgment of the applicants. The cabinet shall administer written exams unless the cabinet and board grant a waiver to allow an oral exam. Oral exams may be administered to applicants who meet the minimum qualifications of Section 10 of this regulation. The cabinet shall grade the examinations and notify the applicant of the outcome. Applicants shall achieve a score of seventy (70) percent to pass the examination. Examinations shall not be returned to the applicant, but results may be reviewed with a member of the board or cabinet upon written request by the applicant. [~~The examination questions promulgated by the ABC shall be used as a guideline.~~]

(3) Scheduling examinations. [~~(2)~~] Examinations shall be conducted at least semiannually [~~held~~] at places and times set forth by the cabinet. The cabinet shall provide advance announcement of these examinations. [~~The examinations shall be conducted at least semiannually.~~]

[~~(3) Except in cases which the board may decide represent proper exceptions, all examinations shall be written. All examinations shall be graded by the board, or by the cabinet and the applicant notified of the outcome. Papers shall not be returned to the applicant, but means will be provided to review the results with a member of the board or cabinet upon request by the applicant.~~]

(4) Exam content. The cabinet [~~Separate examinations~~] will [~~be~~] prepare[~~d~~] examinations to address the [~~cover~~] basic differences in the duties and responsibilities of certified operators, types of facilities, [~~variations in waste~~]water quality standards, conditions of receiving waters and other pertinent matters.

(5) Applicants who fail to pass an examination may register to take [~~reapply for~~] the examination again on [~~at~~] a regularly scheduled examination date [~~or by appointment with the cabinet~~].

Section 5. [~~6.~~] Fees. (1) Fees for certification of operators of wastewater systems shall not exceed the following:

(a) Examination: thirty-five (35) dollars.

(b) Renewal of certificate: thirty-five (35) dollars per biennium. Limited certificates: twenty (20) dollars per year.

(c) Certification by reciprocity: thirty-five (35) dollars.

(d) Reinstatement of lapsed certificate: not to exceed thirty-five (35) dollars plus renewal fee.

(2) For training sessions conducted by the cabinet: not to exceed five (5) dollars per contact hour.

(3) Fees shall [~~accompanying applications will~~] not be returned to applicants [~~those~~] who do not pass the examination.

(4) The cabinet shall provide an estimate of program costs for the upcoming renewal period and a draft schedule of reasonable fees for that renewal period to the board for approval [~~by the first of November~~] prior to the beginning of the new renewal period.

Section 6. [~~7.~~] Issuance of Certificates. (1) Certification. Upon satisfactory fulfillment of the requirements of this regulation [~~provided herein~~] and upon recommendation of the board [~~of certification~~], the cabinet shall issue a [~~suitable~~] certificate to the applicant designating [~~his or her competency. This certificate will indicate~~] the classification of the wastewater system for which the operator has demonstrated competency. If information related to the operator's employment or mailing address changes from the application filed for certification, the certified operator shall provide written notification to the division within thirty (30) days. If a certified operator becomes permanently incapacitated while employed by a wastewater treatment plant, the employer shall notify the division. [~~is qualified.~~]

(2) Duration and renewal of certificates.

(a) Certificates for all certified operator classes, except limited, as identified in Section 8 of this regulation, shall be valid for up to two (2) years after each renewal, unless suspended or revoked for cause or replaced by that of a higher classification. [~~All~~] Certificates shall expire [~~at midnight~~] on June 30 of odd-numbered years. Certificates may be renewed without examination, if the certified [~~of~~] operator is in good standing, upon completion of the required training hours outlined in subsection (7) of this section and [~~shall be renewed automatically~~] upon submittal of a complete renewal [~~written~~] application and [~~submission of~~] applicable renewal fees [~~to be received by the cabinet before June 30 of each renewal year~~]. Application for certificate renewal shall be made on a form provided by the cabinet and incorporated by reference in Section 11 of this regulation. If the renewal application and fee are not received by the cabinet by [~~prior to~~] June 30 [~~1~~], the certificate shall be considered lapsed and shall not be reinstated without completion of the training required in subsection (7) of this section and payment of a reinstatement fee as provided in Section 5 [~~6~~] of this regulation. Expired certificates shall continue in force pending administrative processing of a renewal, if the certified operator is in good standing and has complied with the renewal requirements of this subsection by June 30 of the renewal year. Certificates continued under this paragraph shall remain fully effective and enforceable.

(b) Limited certificates shall expire on June 30 of each year. The cabinet may renew the limited certificate upon receipt of the renewal application if [~~each year on midnight of the last day of February and may be renewed only after~~] the certified operator has [~~cabinet has timely received the required written application and renewal fee, and certified that the holder of the certificate has substantially~~] complied with all requirements for proper operation of [~~properly operating~~] the facility under his supervision, and has submitted a complete renewal application and applicable renewal fees. [~~or her responsible charge.~~]

(3) Certification for a higher classification. Certified operators who desire to become certified in a higher classification shall [~~first~~]

satisfactorily complete the minimum requirements of Sections 4 and 10 of this regulation for the higher classification before submitting a new application [certificate is issued]. Experience earned under a limited certificate shall [does] not count toward fulfillment of the qualifications for other classifications.

(4) Certificates shall be valid only while [so long as] the holder uses reasonable care, judgment, and application of his [or her] knowledge in the performance of his [or her] duties. [No] Certificates shall not be valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) Termination of a certification. [The certificates of operators who terminate their employment at a wastewater system will be valid for four (4) years provided they are renewed as required by subsection 2 of this section, except for limited certificate holders. After four (4) years, the] Certificates shall terminate if not renewed for two (2) consecutive renewal periods [will be automatically invalidated]. Limited certificates shall terminate [become invalid] immediately after the expiration date if not renewed. If a [Operators whose] certificate terminates, an operator shall apply, pay applicable fees and pass an examination in the classification for which he is qualified to be certified [are invalidated may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of a written or oral examination shall be required by the board].

(6) Reciprocity. Certificates may be issued [at the discretion of the board] in a comparable classification, without examination, to a [any] person who holds a valid certificate in a [any] state, territory, or possession of the United States or a [any] country if [provided] the requirements for certification of operators under which the person's certificate was issued are no less stringent than the requirements for certification set forth in [do not conflict with] KRS Chapter 224[.135] and this regulation [or this administrative regulation and are of a comparable standard;] and[, providing further, that] reciprocal privileges are granted to certified operators of the Commonwealth [this state].

[(7) Certificates shall be prominently displayed in the office of the operator.]

(7) [(8)] Training requirements. Certified operators shall accumulate continuing education credits approved by the cabinet or board prior to applying for certificate renewal.

(a) Class I and II certified operators shall complete twelve (12) hours of training for renewal. Class III and Class IV certified operators shall complete twenty-four (24) [have accumulated twelve (12)] hours of training [per year of appropriate board approved training] for each [certificate] renewal. [Class I and II operators shall complete six (6) hours of training per year for renewal. Such] Training [shall] includes, but is [may] not [be] limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. However, at least one-half (1/2) of the training required for recertification shall be in process control and operation or in the basic sciences related to these topics. Training hours accumulated [in any biennium] in excess of the minimum number required [requirement necessary] for renewal may be carried forward for a period of two (2) years [to the next renewal period]. No training is required for holders of limited [or industrial] certificates.

(b) Certified operators who teach board-approved training courses may receive, upon approval of the board, hour-for[per]-hour credit for actual instruction time[, except that for courses taught more than once during a renewal period, credit will be allowed for only one (1) period of instruction].

(c) The criteria [used] for determining whether to approve training, other than the training provided by the cabinet, are:

1. The ability of the course to provide information that will enhance the proper operation and maintenance of wastewater treatment facilities; and

2. The ability of the instructor to properly present the [such] information.

(d) Alternate [Therefore, in making its determination regarding approval of] training courses may be considered by submittal to the division and review by the board of [the board will require that at least] the following information [specifies about the course be submitted]: the course name; the date, location, and the beginning and ending times of the course; the credit hours being requested; a summary of the course content of sufficient detail to determine relevance and quality of the course; and the name and credentials of each instructor for the course.

(e) [(d)] The board may waive any [or all] of the requirements of paragraph (a) of this subsection for all or portions of a class of operators as identified [defined] in Section 9 [11] of this regulation [when the board has determined, based on information it has gathered, that such action is appropriate and justified].

Section 7. [8.] Disciplinary Action. A certified operator shall be subject to a disciplinary action identified in this section if the cabinet, in consultation with the board according to this section, determines that [Revocation of Certificates. The cabinet may revoke the certificate of an operator, following a hearing before the board and upon recommendation by the board, when it is found that] the certified operator has practiced fraud or deception in obtaining certification or filing cabinet mandated reports; has not used [that] reasonable care or [,] judgment [or the application of his or her knowledge was not used] in the performance of [his or her] duties; has failed to apply knowledge in the performance of duties; or [that the operator] is incompetent, [or] unable or unwilling to properly perform [his or her] duties.

(1) Sanctions. The disciplinary action shall be determined by the cabinet in accordance with the review procedures in subsection (2) of this section, and may take the form of the following sanctions depending on the severity, duration, and number of the violations. The sanctions may include, but are not limited to:

(a) Probation for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certificate for a specified period of time, not to exceed one (1) year, during which the certificate shall be considered void;

(c) Temporary or permanent revocation of the operator's certification (temporary revocations shall not be less than one (1) year or more than four (4) years in duration); or

(d) Civil or criminal penalties against the operator.

(2) Initial review procedures. Written complaints received by the board or cabinet on a certified operator, unless duplicitous or frivolous, shall be reviewed at the next regularly scheduled board meeting. If the charges warrant further investigation, the certified operator may be advised to appear before the board to discuss the charges levied. Upon completion of the review, the board shall make a recommendation to the cabinet regarding the operator's certification status. The board may recommend that no action be taken, that the cabinet impose a sanction identified in subsection (1) of this section, or any other action.

(3) Cabinet action. The cabinet shall review the evidence presented and the board's recommendations. Upon completion of the review, the cabinet will initiate the recommended action or notify the board as to why an alternative action was taken. The certified operator and his employer shall be advised by certified mail of the action, the reasons outlined for the action, and the length of time for which the sanction shall apply. A certified operator whose certificate has been suspended or revoked shall not have primary responsibility for a wastewater system during the period that the disciplinary action remains in effect. If a certification is permanently revoked, the operator shall be ineligible for future certification as a wastewater system operator. Experience gained during a suspension or temporary or permanent revocation shall not be included toward meeting the requirements of Section 10 of this regulation. An action taken by the cabinet pursuant to this section shall not preclude the cabinet from

pursuing additional civil or criminal action.

(4) Sanction review and removal. During the operator's probation, suspension, or temporary revocation, the board and cabinet will monitor the operator's work activities. At the end of the sanction period, the board will recommend to the cabinet whether the sanction should be lifted or whether additional action is necessary against the certified operator.

(5) Appeal procedures. An operator who considers himself aggrieved by a disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

Section 8. [9.] Classification of Wastewater Systems. Wastewater systems shall be classified in one (1) of five (5) classes. These classifications shall be made according to population served, type of treatment process [work], character and volume of wastes to be treated, and the use and nature of the waters receiving the system effluent. Classifications I through IV shall be based on the population served or for which the system is designed, except that a system may be classified by the cabinet and board in a group higher than indicated if [at the discretion of the cabinet by reason of] the incorporation into the system of special features of design or characteristics makes the system more difficult to operate than usual, or if [by reason of] conditions of flow or use of the receiving water require [requiring] an unusually high degree of system operation control, or if [for] combinations of these [such] conditions or circumstances exist. In addition, a limited classification is available for operators of wastewater facilities owned by [at] school systems. Classes I through IV are [defined] as follows:

(1) Class I: Systems with a design capacity of less than or equal to 50,000 [300,000] gallons per day.

(2) Class II: Systems with a design capacity more than 50,000 [300,000] gallons per day, but less than or equal to two (2) million gallons per day.

(3) Class III: Systems with a design capacity more than two (2) million gallons per day, but less than or equal to seven and one-half (7 1/2) million gallons per day.

(4) Class IV: Systems with a design capacity in excess of seven and one-half (7 1/2) million gallons per day.

Section 9. [10.] Classification of Wastewater System Operators. Five (5) classes of certified operators are hereby established and shall range from Class I through Class IV, plus limited. Each operator classification except for limited [is intended to] relates directly to the corresponding classification of wastewater system outlined in Section 8 of this regulation. [In addition, there is hereby established an industrial classification for operators of facilities for pretreating wastewater prior to discharge into municipal sewers.]

Section 10. Certified [11.] Operator Qualifications: Experience, Education and Equivalencies. Applicants [(1) Operators] shall be examined by the [board or] cabinet as to education, experience, and knowledge as related to the classification of wastewater systems for which the application applies [examined]. Applicants may be required further to give evidence of good moral character, dependability, initiative, interest in his [or her] work, and other pertinent characteristics in relation to operation of the class of wastewater system for which certification is being applied. Applicants shall pass the required written examination unless granted a waiver to take an oral examination in accordance with Section 4(2) of this regulation.

(1) Classification of wastewater treatment plant operator certificates. [(2)] Experience and educational requirements for certification of operators shall be as follows:

(a) Class I:

1. Completion of high school or general education development (GED) efficiency [equivalent]; and

2. One (1) year of acceptable operation of a [applicable] wastewater system.

(b) Class II:

1. Completion of high school or GED efficiency [equivalent]; and

2. Two (2) years of acceptable operation of a [applicable] wastewater system [of Class I or higher].

(c) Class III:

1. Completion of high school or GED efficiency [equivalent]; and

2. Three (3) years of acceptable operation of a [applicable] wastewater system with one (1) year of that experience in a [of] Class II or higher wastewater system.

(d) Class IV:

1. A baccalaureate degree in a standard curriculum in engineering, allied sciences or equivalent; and

2. At least five (5) years of acceptable operation of a [applicable] wastewater system. Three (3) years of the required experience shall be in a [of] Class III or higher wastewater system with at least two (2) years of primary responsibility for a Class III or higher system.

(e) Limited: An operator of a wastewater treatment facility for a school shall be entitled to apply for a limited certificate of competency for the particular facility operated. The certification shall only be issued if the operator has demonstrated to the cabinet that he has the knowledge and experience required to properly operate the specific wastewater facility.

(2) Substitutions [(3)] In evaluating qualifications of operators and experience or educational equivalencies, substitutions may be allowed as follows [the board shall be guided by the following]:

(a) If applicable, experience may be substituted for a portion of the educational requirements: [In order to establish how much experience will be accepted, the board shall determine whether the work performed required some technical knowledge of the work and whether or not responsible charge of work was included. In wastewater systems, where responsibility is divided, supervisors of important divisions may be credited with having responsible charge. Experience accumulated under an industrial certificate will be equivalent to Class I. No experience credit will be allowed for operation under a limited certificate.]

1. [(b)] Experience, to be acceptable, shall be the result of satisfactory accomplishment of work. [Evaluation may be based on reports of the cabinet or other agencies having appropriate responsibilities for supervising wastewater systems.]

2. [(c)] Partial credit may be given for operating experience in maintenance, laboratories or other work of wastewater systems and allied trades [such as plumbing].

3. To establish how much experience will be accepted, the board shall determine whether the work performed required some technical knowledge and if the applicant was primarily responsible for the operation of the system. In wastewater systems where responsibility is divided, supervisors of important divisions may be credited with having primary responsibility.

4.a. One (1) year of board-approved experience may be considered equivalent to one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school degree or a GED, subject to the approval of the board. Operators requesting this substitution shall submit a written request to the cabinet and may be requested to appear before the board.

b. Each year of experience in wastewater operations shall be equivalent to one (1) year of college. Four (4) years of experience approved by the board shall be considered equivalent to a baccalaureate degree.

c. Experience applied to educational requirements shall not be applied to the experience requirement.

(b) If [(d) Where] applicable, education may be substituted for a portion of experience requirements as specified below:

1. One (1) year of college work (limited to [approved] curricula in environmental engineering, environmental technology or related scientific fields) may be considered as equivalent to one (1) year [a maximum of two (2) years] of experience [or one (1) year of experience with responsible charge].

2. [Where] Education [is] substituted for experience [it] shall not [exceed an amount which would] reduce the requirements of actual operating experience to less than six (6) months for Class I, [or] less than one (1) year for Class II, less than [or] two (2) years for Class III, or less than three (3) years for Class IV.

3. Education applied to the experience requirement shall not [cannot also] be applied to the education requirement.

[(e) Where applicable, experience may be substituted for education requirements as specified below:

1. One (1) year of experience may be considered as equivalent to a maximum of one (1) year of high school. Four (4) years of board approved experience may be considered equivalent to a high school degree.

2. Each year of responsible charge or two (2) years experience in an important phase of operation, other than responsible charge, will be considered equivalent to one (1) year of college. Four (4) years of responsible charge approved by the board or eight (8) years of other board approved experience may be considered equivalent to a baccalaureate degree.

3. Experience applied to educational requirements may not also be applied to the experience requirement.]

(c) [(f)] Substitutions for formal education may be as follows: [1.] Training credits [(T.C.)] for board approved operator training schools, seminars and technical courses may be substituted for high school and college requirements upon approval of the board. One (1) year of college work equals thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board approved courses [shall] equals one (1) training credit [T.C.], and forty-five (45) training credits [T.C.] equals eighteen (18) semester hours of college or one (1) year of high school. One (1) continuing education unit (CEU) shall equal ten (10) training credit hours. Training credits substituted for the education requirement shall not be used as continuing education for certificate renewal.

[2. An acceptable high school equivalency certificate may be used to substitute for graduation from high school.]

Section 11. Documents Incorporated by Reference for Wastewater System Certified Operators. The following documents are incorporated by reference and are available for public inspection and copying, subject to the copyright laws, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Drinking Water or Wastewater Operator Certification Application, Kentucky Division of Water, Frankfort, Kentucky, January 1992.

(2) Application for Certificate Renewal, Kentucky Division of Water, Frankfort, Kentucky, January 1992.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 13, 1992
FILED WITH LRC: May 14, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this administrative regulation will be held on June 25, 1992 at 1 p.m. in Room G-1 of the Capital Plaza Tower in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. All comments must be received in the Division's main office by 4:30 (Eastern time) on June 25, 1992. A transcript of the public hearing may not be made unless a written request for a transcript is made at least five days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation by the close of the comment period. Send written notification of intent to be heard at the public hearing, request for a transcript, or written comments on the proposed administrative regulation to the following contact person: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack A. Wilson

(1) Type and number of entities affected: The amendment to this regulation applies to approximately 2206 wastewater treatment plant operators currently certified. It also applies to 2923 wastewater treatment plants. These numbers vary slightly from month to month due to the issuance of new discharge permits and operator certifications and the lapsing of others.

(a) Direct and indirect costs or savings to those affected: There are two changes to this regulation which indirectly impact a certified wastewater operator's costs/savings. The classification system has been revised. The current regulation places plants with less than a 300,000 gallon per day (gpd) design capacity in Class I and 300,000 to two million in Class II. In an effort to meet the needs of small treatment plant operators, the Class I ceiling was reduced to 50,000 gpd design capacity. This change will allow the Division of Water to design training courses which focus on the operation and maintenance characteristics of small wastewater systems and thereby hopefully improve operations at these plants. These facilities constitute approximately 85% of the KPDES permittees. The lowering of the Class I ceiling will move 239 facilities into Class II. Facilities moved into this class will have until January 1, 1994 to meet the staffing requirements. This change will increase costs for the facility or operator depending on who pays for the certificate upgrade. The Disciplinary Actions section has been expanded to allow for the placement of an operator's certificate on probation, suspension, or temporary revocation. These options provide an operator with a direct savings in that the ability exists to maintain his certificate and therefore his livelihood. If an operator elects to challenge this action he could incur legal costs.

1. First year: The restructuring of the class system will require 239 facilities to hire Class II operators or ensure that their current operators upgrade to a Class II certificate by January 1, 1994.

2. Continuing costs or savings: The newly certified operators will have to attend training and renew their license every two years. This requirement currently exists for all facilities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: The reporting and paperwork required of wastewater treatment plant operators will not change significantly. Operators and/or their employer will now be required to advise the cabinet in writing of address or employment changes. Operators are currently required to file an application for certification and renewal.

(2) Effects on the promulgating administrative body: There will be no significant impact on the administrative body. The lowering of the Class I ceiling will require that new training and tests be developed. The recordkeeping associated with the increased disciplinary options is already in place for revocations.

(a) Direct and indirect costs or savings: While exams and training will have to be revised, additional costs will not be incurred as these items are already revised on an annual basis. The need to train and certify additional Class II operators will be covered by an already planned expansion of the 1992 training schedule.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The reporting and paperwork of the agency will not change. The Division of Water is currently maintaining records on enforcement actions and operator

qualifications.

(3) Assessment of anticipated effect on state and local revenues: The change in the Class structure will require operators to upgrade to a Class II certificate. This involves the payment of a $30 fee for testing/certification. The state's revenues will increase from this initiative. The impact on local revenues will depend on whether the permittee or the operator pays for the certification. The imposition of a disciplinary action may result in a system having to hire a new certified operator if the system's operator in responsible charge has his certification suspended or revoked.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The lowering of the Class I ceiling is in direct response to comments from operators of small plants that most training classes offered are not basic enough to meet their needs. By reducing the design capacity of the plants in this class, their training needs may be more fully addressed. The addition of three new types of disciplinary actions is prompted by the fact that not all noncompliances warrant certificate revocation. The new actions will allow the Kentucky Board of Certification of Wastewater System Operators and cabinet to reprimand an operator without costing him his livelihood. Use of these actions should also curb or prevent inappropriate behavior which leads to certificate revocation.

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

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation is tiered to reflect differences in the size and type of wastewater systems and operator classes.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No__ If yes, complete questions 2-4. This regulation specifies that all wastewater treatment plants must be staffed by properly certified operators who are in responsible charge of the operation. In Kentucky, there are 737 systems owned and operated by local governments. Certified operators are employed by municipal wastewater systems which are responsible for providing a service to the local area.

(2) State what unit, part or division of local government this administrative regulation will affect. This regulation will apply to all local governments and special districts which own or operate a wastewater treatment system.

(3) State the aspect or service of local government to which this administrative regulation relates. Wastewater treatment systems.

(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 (+/-): No impact.

Expenditures (+/-): See explanation below.

Other Explanation: The regulation lowers the gallons per day design capacity ceiling on Class I and moves 239 facilities into Class II. Expenditures on the part of the local governments will depend on their ability to meet the staffing requirements with existing operators. Expenditures will be required if a system must pay for certification exams or provide incentive pay to those who upgrade their certification. However, unless voluntarily taken on by the utility all fees under this regulation are the responsibility of the individual operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal statutes do not require that wastewater treatment systems be operated by a properly certified operator. While this is a state requirement there is currently a bill draft before Congress which proposes to establish a federal certification program. There are currently 49 states in the U.S. which require mandatory certification of wastewater operators.

2. State compliance standards. Kentucky Revised Statute 224.73-110 specifies that all wastewater systems must be operated under the supervision of a certified operator.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate relative to operator certification.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This regulation does impose stricter standards than the federal government, in that a certified operator is required by Kentucky Revised Statute.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky has required that wastewater systems be operated by a properly certified operator since enactment of the statute in 1972. Given the importance of maintaining Kentucky's water quality, it is imperative that these facilities be operated by individuals who are properly certified. This certification means that an operator has met certain educational and experience requirements, passed a certification exam and attends continuing education courses necessary to maintain the certificate.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:030. Water treatment plants; water distribution systems; certification of operators.

RELATES TO: KRS Chapters 223, 224

STATUTORY AUTHORITY: KRS 223.160 to 223.220, 224.10-100, 224.10-110, [~~Chapters 160-220, 223-224.032, 224.033; PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572,~~] 42 USCA 300f, 300g, 300j, 40 CFR 141.2, as amended at 54 Federal Register 27526 and 27562 (1989)

NECESSITY AND FUNCTION: KRS 223.160-223.220 establishes a board of certification and authorizes the cabinet to establish a program requiring certification of water system operators. KRS 224.10-110 [~~032~~] directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising the [~~such~~] primary enforcement responsibility. This regulation establishes standards for classification of water treatment plants and water distribution systems; qualifications of applicants; examination procedures; duties of the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators [~~board~~]; and provisions relating to the issuance and [~~,~~] renewal[~~, and revocation~~] of certificates; disciplinary actions; and other provisions necessary for the certification of operators.

Section 1. General Provisions. (1) Direct responsible charge. Each public water system shall be operated under the supervision of a certified operator who is in direct responsible charge of the system. The certified operator in direct responsible charge shall hold a valid certificate in a class equal to or higher than that required for the system under his [~~or her~~] supervision. The certified operator in direct responsible charge may be an individual who has been assigned sole responsibility for the operation of the system, or who has been delegated the direct responsibility to supervise others in the performance of their duties in operating the system. [~~Except as otherwise specified in subsection (2) of this section,~~] The certified operator in direct responsible charge shall be physically on the premises of the water treatment facility[~~, within the area of the distribution system,~~] or otherwise performing system-related duties within the system during the [~~shift or~~] shifts for which the operator is responsible, except as provided in subsection (2) of this section.

(2) Shifts.

(a) Water treatment systems. Public water systems shall employ [~~use~~] a certified operator [~~who is~~] in direct responsible charge as specified in subparagraphs 1 through 4 of this paragraph;

1. Class I. [~~All~~] Operational procedures performed at Class IA-D or IB-D water treatment systems shall be conducted under the supervision of, or by, a certified operator.

2. Class II.

a. [~~All~~] Operational procedures performed at Class IIA water treatment systems serving a population less than 500 shall be conducted under the supervision of, or by, a Class IIA, IIIA or IVA [~~or higher~~] certified operator. [~~All~~] Class IIA water treatment systems serving a population equal to or greater than 500 and less than 3,000 shall be staffed with a Class IIA, IIIA or IVA [~~or higher~~] certified operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class IIA, IIIA or IVA [~~or higher~~] certified operator.

b. [~~All~~] Operational procedures performed at Class IIB-D water treatment systems shall be conducted under the supervision of, or by, a Class IIA, IIB-D, IIIA, IIIB or IVA [~~or higher~~] certified operator.

c. [~~All~~] Operational procedures performed at Class IIC-D water treatment systems shall be conducted under the supervision of, or by, a Class IIA, IIB-D, IIC-D, III or IV [~~or higher~~] certified operator.

3. Class III.

a. [~~All~~] Class IIIA water treatment systems shall be staffed with a Class IIIA or IVA [~~higher~~] certified operator in direct responsible charge of [~~all~~] shifts where water is treated.

b. [~~All~~] Class IIIB and IIIC water treatment systems shall be staffed by a Class III or IVA [~~higher~~] certified operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class III or IVA [~~higher~~] certified operator.

4. Class IV. [~~All~~] Class IVA water treatment systems shall be staffed with a Class IVA certified operator in direct responsible charge for [~~all~~] shifts where water is treated.

(b) Water distribution systems.

[~~1. All~~] Operational procedures performed within water distribution systems [~~having no booster chlorination or other water treatment capabilities~~] shall be conducted under the supervision of, or by, a distribution system operator certified in a class equal to or higher than the class of the system.

[~~2. All~~] Furthermore, water distribution systems having booster chlorination or other treatment capabilities shall be staffed with a certified distribution operator in direct responsible charge in a class equal to or higher than the class of the distribution system during the daytime weekday shift. [~~Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a distribution system operator certified in a class equal to or higher than the class of the system.~~]

(3) Certifiable personnel. Persons who are under the supervision of the operator in direct responsible charge may become certified by the cabinet if they meet the appropriate education and experience requirements.

(4) Production personnel. Laboratory or distribution personnel and others who have significant routine input into the production or distribution of potable water may be certified if they [~~can~~] demonstrate to the satisfaction of the cabinet that they meet the education and experience requirements and possess the technical and practical knowledge to perform the [~~actual mechanical and other~~] procedures involved in the operation of a water treatment plant or water distribution system.

(5) Semipublic system. Certified operators are not required for semipublic water systems. [~~The systems shall be operated by competent operators.~~]

(6) Certificate display. If a water system office is available at the water treatment plant or within the distribution system, the operator's certificates shall be prominently displayed on the wall.

(7) Wallet card. Certified operators shall carry the cabinet-issued wallet card showing current certification status while on duty.

(8) Staffing compliance schedule. Class III and IV public water systems subject to the on-site staffing requirements of subsection (2) of this section shall comply with the staffing requirements by January 1, 1993.

Section 2. Duties of the [~~Kentucky~~] Board [~~of Certification of Water Treatment Plant and Water Distribution System Operators~~]. In carrying out its responsibilities and with consideration given to the minimum standards and guidelines of the ABC, the board may [~~shall~~]:

(1) Examine the qualifications of applicants and recommend qualified applicants to the cabinet for certification;

(2) Review and approve [~~all~~] substitutions for [~~of~~] education and [~~for~~] experience requirements;

(3) Review and assist the cabinet in the preparation of examinations;

(4) Review and provide comments to the cabinet on proposed drinking water operator certification regulations; [~~Review the results of examinations;~~]

(5) Review and provide comments to the cabinet on proposed training courses and seminars designed to provide continuing education to certified operators; [~~Recommend qualified applicants for certification by the cabinet;~~]

[~~(6) Maintain records;~~]

(6) Review evidence and advise the cabinet regarding disciplinary actions [~~(7) Recommend revocation of certificates~~] for certified operators who fail to comply with the applicable laws and regulations of the Commonwealth;

(7) [~~(8)~~] Review the certification regulations [~~for certification~~] of states which are seeking reciprocity with the Commonwealth; and

[~~(9) Review applications and supporting documents and determine eligibility of applicants for examination; and~~]

(8) [~~(10)~~] Review and provide comments to the cabinet on proposed fees for training and certification of operators.

Section 3. Application and Examinations for Certification. (1) Application. An individual [~~operator~~] desiring to be certified shall file an application with the cabinet and pay the applicable fee specified in 401 KAR 8:050, Section 3. Application shall be made on a form provided by the cabinet and incorporated by reference in Section 9 of this regulation. Applications shall not be filed with the cabinet until the individual has met the minimum qualifications required in this regulation. [~~Applications may be reviewed by the board.~~]

[~~(2) Determining eligibility. The executive secretary treasurer of the board will assemble all the information needed by the board to determine eligibility of the applicant for examination and certification.~~]

(2) [~~Section 4. Examinations. (1)~~] Examinations. The board and [~~the~~] cabinet shall be jointly responsible for preparation of the

examinations which shall [to] be used in determining knowledge, ability and judgment of the applicants. The cabinet shall administer written exams unless the cabinet and board grant a waiver to allow an oral exam. Oral exams may be administered to applicants who meet the minimum qualifications outlined in Section 8 of this regulation. The cabinet shall grade the examinations and notify the applicant of the outcome. Applicants shall achieve a score of seventy (70) percent to pass the examination. Examinations shall not be returned to the applicant, but results may be reviewed with a member of the board or cabinet upon written request by the applicant.

(3) [(2)] Scheduling examinations. Examinations shall [will] be conducted at least semiannually at places and times set by the cabinet. The cabinet shall provide [, with a suitable method of] advance announcement of these examinations [s provided by the cabinet.

(3) Examinations. Except in cases which the board decides are proper exceptions, all examinations shall be written. [[[All]]] examinations shall be graded by the cabinet, subject to appropriate review by the board, or by its designated representative, and the applicant will be notified of the outcome. Applicants shall achieve a score of seventy (70) percent in order to pass the examination. Papers will not be returned to the applicant, but means will be provided to review the results with a member of the board or cabinet upon written request by the applicant.]

(4) Exam content. The cabinet will prepare examinations to address the basic differences in the duties and responsibilities of certified operators, types of facilities, drinking water standards, surface and groundwater source characteristics and other pertinent matters.

(5) Applicants who fail to pass an examination may register to take the examination at a regularly scheduled examination date.

Section 4. [5.] Issuance of Certificates. (1) Certification. Upon satisfactory fulfillment of the requirements of this regulation and upon recommendation of the board, the cabinet shall [will] issue a certificate to the applicant designating the classification of the water treatment plant or water distribution system for which the operator has demonstrated competency. If information related to the operator's employment or mailing address changes from the application filed for certification, the certified operator shall provide written notification to the division within thirty (30) days. If a certified operator becomes permanently incapacitated while employed by a water treatment plant or distribution system, the employer shall notify the division.

(2) Duration and renewal of certificates.

(a) Certificates for all certified operator classes, except limited as identified [defined] in Section 6(4) [9(2)(h)] of this regulation, shall be valid for up to two (2) years after each renewal, unless suspended or revoked for cause or replaced by one of a higher classification. Certificates [of operators] shall expire on June 30 of even-numbered years. Certificates [, but] may be renewed without examination, if the certified operator is in good standing; upon completion of the required continuing education hours outlined in subsection (7) of this section and upon submittal of a complete renewal [written] application and [submission of the] applicable [renewal] fees specified in 401 KAR 8:050, Section 3. Operators desiring renewal shall apply on a form provided by [return renewal requests to] the cabinet and incorporated by reference in Section 9 of this regulation by June 30 [1] of even-numbered years. Expired certificates shall continue in force pending administrative processing of a renewal, if the certified operator is in good standing and has complied with all the renewal requirements of this subsection by June 30 of the renewal year. Certificates continued under this paragraph remain fully effective and enforceable.

(b) Limited certificates shall expire on June 30 of each year. The cabinet may renew the limited certificate upon receipt of the renewal application if the certified operator [and shall be renewed upon request, after the holder of the certificate] has complied with all requirements for proper operation of the facility under his responsible [or her] charge and has submitted a written application and [the] applicable [renewal] fees specified in 401 KAR 8:050, Section 3. [Limited certificates terminate immediately if not renewed.]

[(c) If operators have not requested and met the requirements for renewal of a certificate, the certificate shall lapse upon expiration and shall not be renewed without payment of the reinstatement fee specified in 401 KAR 8:050(3)(d) following procedures for reissuing set forth in Section 5(4) of this regulation.]

(3) Certification for a higher classification [Qualifications]. Certified operators who desire to become certified in a higher classification shall satisfactorily complete the requirements of Sections 3 and 8 of this regulation for the higher classification before submitting a new application [certificate is issued]. Experience earned under a limited certificate shall not count toward fulfillment of qualifications for other classifications.

(4) Certificates shall be valid only while the holder uses reasonable care, judgment, and application of his knowledge in the performance of his duties. Certificates shall not be valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) [(4)] Termination of a certificate. If a certified operator fails to renew his certificate, [Reissuing. After four (4) years,] the certificate shall terminate after two (2) consecutive renewal periods. Limited certificates shall terminate immediately after the expiration date if they are not renewed. Once a [if not renewed. Operators whose] certificate has [s have] terminated, an operator shall apply, pay applicable fees and pass [may have their certificates reinstated, or be issued new certificates after passing] an examination in the classification for which he is [they are] qualified to be certified [, except for those revoked by a cabinet action].

(6) [(5)] Reciprocity. Certificates may be issued in a comparable classification [may be issued], without examination, to a [any] person who holds a valid certificate in a [any] state, territory, or possession of the United States, or a [any] country, if [provided] the requirements for certification of operators under which the person's certificate was issued are no less stringent than the [any] provisions of KRS Chapter 223 and KRS Chapter 224 and this regulation [or the regulations promulgated pursuant thereto;] and reciprocal privileges are granted to certified operators of the commonwealth.

[(6) Display. Wall certificates shall be prominently displayed in the office of the operator.

(7) Wallet cards. Wallet cards showing current certification status shall be carried by the operator at all times while on duty.]

(7) [(8)] Training requirements.

(a) Certified operators shall accumulate continuing education credits approved by the cabinet or board, prior to applying for certificate renewal.

1. This subparagraph shall apply to operators whose certification expires on or before June 30, 1992. Class I operators shall complete six (6) hours of training for renewal. Class II, III, and IV operators shall complete twelve (12) hours of appropriate cabinet-approved training for certificate renewal. Such training may include, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. Training hours accumulated [completed in any given biennium] in excess of the minimum number required [requirement necessary] for renewal may be carried forward for two (2) years [one (1) renewal period]. No training is required for operators with [holders of] limited certificates.

2. This subparagraph shall apply to operators whose certification expires after June 30, 1992. Class I and II certified operators shall complete twelve (12) hours of training for certificate renewal. Class III and IV certified operators shall complete twenty-four (24) hours of training for certificate renewal. Training includes, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. Training hours accumulated in excess of the minimum number required for renewal may be carried forward for two (2) years. No training is required for operators with limited certificates.

(b) The board [~~cabinet~~] may waive any [~~or all~~] of the requirements of paragraph (a) of this subsection for all or portions of a class of operators, as identified [~~defined~~] in Section 7 [9] of this regulation.

(c)1. This subparagraph shall apply to operators whose certification expires on or before June 30, 1992. Operators holding both treatment and distribution certificates shall be required to complete eighteen (18) hours of training for recertification in lieu of the requirements of subsection (7)(a)1 [~~8(a)~~] of this section.

2. This subparagraph shall apply to operators whose certification expires after June 30, 1992. Certified operators with separate Class I and II treatment and distribution certificates shall complete twelve (12) hours of training for recertification in lieu of the continuing education requirements of subsection (7)(a)2 of this section. Certified operators holding separate Class III or IV treatment and distribution certificates shall complete twenty-four (24) hours of training for recertification in lieu of the continuing education requirements of subsection (7)(a)2 of this section.

(d) Certified operators who teach board-approved training courses may receive, upon approval of the board, hour-for-hour credit for actual instruction time.

(e) The criteria for determining whether to approve training, other than the training provided by the cabinet, are:

1. The ability of the course to provide information that will enhance the proper operation and maintenance of water treatment and distribution systems; and

2. The ability of the instructor to properly present the information.

3. In making its determination regarding approval of training courses, the cabinet and board shall require that the following information be submitted for review: the course name; the date, location and beginning and ending times of the course; the credit hours being requested; a summary of the course content of sufficient detail to determine relevance and quality of the course; and the name and credentials of each instructor for the course.

Section 5. [~~6.~~] Disciplinary Action. A certified operator shall be subject to a disciplinary action identified in this section if the cabinet, in consultation with the board according to this section, determines that [~~Revocation of Certificates. The cabinet may revoke the certificate of an operator, when~~] the certified operator [~~:~~] has practiced fraud or deception in obtaining certification or [~~in~~] filing cabinet-mandated reports; has not used reasonable care or judgment in the performance of duties; has failed to apply knowledge in the performance of duties; or is incompetent, unable or unwilling to properly perform duties.

(1) Sanctions. The disciplinary action shall be determined by the cabinet in accordance with the review procedures in subsection (2) of this section, and may take the form of the following sanctions according to subsection (3) of this section, depending on the severity, duration, and number of the violations. The sanctions may include, but are not limited to:

(a) Probation for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certificate for a specified period of time, not to exceed one (1) year, during which the certificate shall be considered void;

(c) Temporary or permanent revocation of the operator's certification (temporary revocations shall not be less than one (1) year or more than four (4) years in duration); or

(d) Civil or criminal penalties against the operator.

(2) Initial review procedures. Written complaints received by the board or cabinet on a certified operator, unless duplicitous or frivolous, shall be reviewed at the next regularly scheduled board meeting. If the charges warrant further investigation, the certified operator may be advised to appear before the board to discuss the charges levied. Upon completion of the review, the board shall make a recommendation to the cabinet regarding the operator's certification status. The board may recommend that no action be taken or that the cabinet impose a sanction identified in subsection (1) of this section, or any other action.

(3) Cabinet action. The cabinet shall review the evidence presented and the board's recommendations. Upon completion of the review, the cabinet will initiate the recommended action or notify the board as to why an alternative action was taken. The certified operator and his employer shall be advised by certified mail of the action, the reasons outlined for the action, and the length of time for which the sanction shall apply. A certified operator whose certificate has been suspended or revoked shall not perform responsible charge operator duties during the period that the disciplinary action remains in effect. If a certification is permanently revoked, the operator shall be ineligible for future certification as a water treatment plant or distribution system operator. Experience gained during a suspension or temporary or permanent revocation shall not be included toward meeting the requirements of Section 8 of this regulation. An action taken by the cabinet pursuant to this regulation shall not preclude the cabinet from pursuing additional civil or criminal action.

(4) Sanction review and removal. During the operator's probation, suspension, or temporary revocation, the board and cabinet will monitor the operator's work activities. At the end of the sanction period, the board will recommend to the cabinet whether the sanction should be lifted or whether additional action is necessary against the certified operator.

(5) Appeal procedures. An operator who considers himself aggrieved by the disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

Section 6. [~~7.~~] Classification of Water Treatment Plants and Water Distribution Systems. (1) Classification. Classification shall be established [~~generally~~] in accordance with the classes listed in subsection (2) of this section. However, the cabinet may make changes in classifications in accordance with needs created by particular complexities of a public water [~~any specific plant or distribution~~] system by reason of special features of design, or by reason of a source of supply that has characteristics that may make operation more difficult than normal, or a combination of these [~~such~~] conditions. Due notice of a [~~any such~~] change shall be given to the owner of the public water [~~treatment plant and/or water distribution~~] system.

(2) Water treatment plants.

(a) Class I:

1. Class IA-D. [~~All~~] Plants using only physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population less than 500.

2. Class IB-D. [~~All~~] Plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population less than 500.

(b) Class II:

1. Class IIA. [~~All~~] Plants using physical and chemical treatment, including [~~chemical coagulation, water softening processes, or filtration and~~] disinfection, and serving a population [~~equal to or greater than 500 and~~] less than 3,000.

2. Class IIB-D. [~~All~~] Plants using only physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population equal to or greater than 500 but less than 3,000.

3. Class IIC-D. [~~All~~] Plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population equal to or greater than 500 but less than 3,000.

(c) Class III:

1. Class IIIA. [~~All~~] Plants using physical and chemical treatment, including [~~chemical coagulation, water softening processes, or filtration and~~] disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.

2. Class IIIB. [~~All~~] Plants using only physical treatment and disinfection, and serving a population equal to or greater than 3,000

and less than 15,000.

3. Class IIIC. [All] Plants using only disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.

(d) Class IVA. [All] Plants [using physical and chemical treatment, including chemical coagulation, water softening processes, or filtration and disinfection, and] serving a population equal to or greater than 15,000.

(3) Water distribution systems.

(a) Class ID. [All] Distribution systems serving a population less than 1,500.

(b) Class IID. [All] Distribution systems serving a population equal to or greater than 1,500 and less than 15,000.

(c) Class IIID. [All] Distribution systems serving a population equal to or greater than 15,000 and less than 50,000.

(d) Class IVD. [All] Distribution systems serving a population equal to or greater than 50,000.

(4) Limited. A limited classification is available to water treatment facilities for schools and [or] semipublic water systems.

(5) Special. Special designations may be added to any certificate if [when found] necessary to show competency of the operator for a parameter of treatment or operation not covered by the basic requirements for standard classification set forth in this section.

Section 7. [8.] Classification of Water Treatment Plant and Water Distribution System Operators. Nine (9) classes of certified operators are established and designated as Class I through Class IV for water treatment, Class I through Class IV for distribution, and limited. Each operator classification, except for limited, relates directly to the corresponding classification of water treatment plant or water distribution system outlined in Section 6 of this regulation.

Section 8. [9.] Operator Qualifications: Experience, Education and Equivalencies. (1) Requirements. Applicants shall be examined by the cabinet regarding education, experience, and knowledge, as related to the classification of water treatment plants or water distribution systems for which the application applies. Applicants shall pass the required written examination unless granted a waiver to take an oral examination in accordance with Section 3(2) of this regulation.

(2) Classification of water treatment plant operators. Operators shall comply with the experience and educational requirements of this subsection prior to applying for certification. [operators shall be based upon the following classifications:]

(a) Class IA-D and Class IB-D:

1. Completion of high school or general education development (GED) efficiency [test]; and

2. One (1) year['s] of acceptable operation of a public [Class I] water system [or higher].

(b) Class IIA:

1. Completion of high school or GED efficiency; and

2. Two (2) years of acceptable operation of a public [Class IA-D or IIA] water system [or higher], with six (6) months of that experience in a Class IIA, IIIA or IVA treatment plant [or higher].

(c) Class IIB-D and Class IIC-D:

1. Completion of high school or GED efficiency; and

2. For Class IIB-D, two (2) years of acceptable operation of a public water [Class IA-D combined treatment and distribution] system [or higher], with six (6) months of that experience in a Class IIA, IIB-D, IIIA, IIIB, or IVA treatment plant [or higher]; or

3. For Class IIC-D, two (2) years of acceptable operation of a public water [Class IB-D combined treatment and distribution] system [or higher] with six (6) months in a Class II, III or IV water [C-D] treatment plant [or higher].

(d) Class IIIA:

1. Completion of high school or GED efficiency; and

2. Three (3) years of acceptable operation of a public water system with one (1) year in a Class IIA, IIIA, or IVA water treatment plant [Class IIA treatment plant Class IIA or higher].

(e) Class IIIB:

1. Completion of high school or GED efficiency; and

2. Three (3) years of acceptable operation of a public water system with one (1) year in a Class IIA, IIB, IIIA, IIIB, or IVA water treatment plant [Class IIA or Class IIB-D treatment plant or higher].

(f) Class IIIC:

1. Completion of high school or GED efficiency; and

2. Three (3) years of acceptable operation of a public water system with one (1) year in a Class II, III, or IV water treatment plant [IIA, IIB-D, or IIC-D treatment plant or higher].

(g) Class IVA:

1. A baccalaureate degree from an accredited college or university; and

2. Three (3) years of acceptable operation of a public water system [treatment plant of Class IIA or higher], with two (2) [one (1)] years of that experience being in a Class IIIA or IVA water treatment plant [or higher].

(h) Limited: [classification.] An operator of a water treatment facility for a school or for a semipublic water supply shall be entitled to apply for a limited certificate of competency for his particular facility, if he has demonstrated to the cabinet that he has the knowledge and experience required to properly operate the particular water treatment facility for which he is responsible.

(3) Classification of water distribution system operators. Operators shall comply with the experience and educational requirements of this subsection prior to applying for certification. [The following requirements shall apply to the certification of distribution system operators:]

(a) Class ID:

1. Completion of high school or GED efficiency; and

2. One (1) year of acceptable operation of a distribution system.

(b) Class IID:

1. Completion of high school or GED efficiency; and

2. Two (2) years of acceptable operation of a distribution system with six (6) months in a Class IID, IIID or IVD distribution system [or higher].

(c) Class IIID:

1. Completion of high school or GED efficiency; and

2. Three (3) years of acceptable operation of a distribution system [of Class IID or higher], with one (1) year [six (6) months] of that experience in a Class IID, IIID or IVD distribution system [or higher].

(d) Class IVD:

1. A baccalaureate degree from an accredited college or university; and

2. Three (3) years of acceptable operation of a [Class II] distribution system[s or higher], with one (1) year of that experience being in a Class IIID or IVD distribution system [or higher].

[(e) For operators who were certified in any classification on March 12, 1985, the requirement for a high school diploma or GED shall not preclude their advancing to the next higher classification than they held on that date.]

(4) Substitutions.

(a) If [Where] applicable, education may be substituted for a portion of the required experience [requirements], as specified below:

1. [(a)] No substitution for Class I.

2. One (1) year of college work (limited to curricula in environmental engineering, environmental technology or related scientific fields) may be considered as equivalent to one (1) year of experience, [(b) Each year of college may be substituted for one (1) year of experience. College credits earned in engineering or allied sciences or an associate degree in engineering technology may, as approved by the board, be substituted for experience], limited to one (1) year for Class II, two (2) years for Class III, and two (2) [three (3)] years for Class IV.

3. Education applied to the experience requirement shall not [cannot also] be applied to the educational requirement or used as continuing education hours toward certification renewal.

(b) [(c)] If applicable, the cabinet may[, at its discretion,] authorize

experience to be substituted for education requirements as specified below:

1. One (1) year [~~Two (2) years~~] experience in active operation of a water system at a Class II level or above shall [~~will~~] be considered equivalent to one (1) year of college. Four (4) [~~Eight (8)~~] years of [~~such~~] experience may be substituted for the requirement of a college degree by a high school graduate or recipient of a GED.

2. One (1) year of board-approved experience may be considered equivalent to one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school diploma or a GED, subject to the approval of the board. Operators requesting this substitution shall submit a written request to the cabinet and may be requested to appear before the board.

3. [~~2.~~] Experience applied to education requirements shall [~~may~~] not [~~also~~] be applied to the experience requirement.

4. [~~(d)~~] For experience to be counted toward satisfying the education requirements of this section, the operator shall be certified during the time in which the experience is earned.

(c) Substitutions of related experience for treatment plant and distribution experience.

1. Experience gained in distribution system operation may be credited toward fulfillment of the treatment plant experience requirement. Two (2) years of experience in a related field may be considered equivalent to one (1) year of treatment experience.

2. Experience gained in drinking water treatment plant operation may be credited toward fulfillment of the distribution system experience requirements. One (1) year of experience in a related field may be considered equivalent to one (1) year of distribution experience.

3. Partial credit, as determined by the board, may be given for operating experience in maintenance, laboratories, other work of drinking water treatment or distribution systems and allied trades.

(d) Substitutions for formal education may be as follows: Training credits for board-approved operator training schools, seminars and technical courses may be substituted for high school and college requirements upon approval of the board. One (1) year of college work shall equal thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board-approved courses shall equal one (1) training credit, and forty-five (45) training credits shall equal eighteen (18) semester hours of college or one (1) year of high school. One (1) continuing education unit (CEU) shall equal ten (10) training credit hours.

Section 9. [~~10.~~] The following documents are incorporated by reference and are available for public inspection and copying, subject to the copyright laws, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Drinking Water or Wastewater Operator Certification Application, Kentucky Division of Water, Frankfort, Kentucky, January 1992. [~~New York State Department of Health, "Manual of Instruction for Water Treatment Plant Operators," May 1990, which may be obtained from Health Education Service, P.O. Box 7126, Albany, New York 12224.~~]

(2) Application for Certificate Renewal, Kentucky Division of Water, Frankfort, Kentucky, January 1992. [~~"American Water Works Association Water Distribution Training Handbook," 1976, which may be obtained from the American Water Works Association, 6666 West Quincy Ave., Denver, Colorado, 80235.~~

~~(3) Kentucky Division of Water, "Training Manuals for Large Water Plant Operators," Finance Printing Press Frankfort, 1984, which may be obtained from the Division.~~

~~(4) Kentucky Division of Water, "Training Manual for Small Water Plant Operators," Finance Printing Press, Frankfort, 1984; which may be obtained from the Division.~~]

[~~Section 11. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.~~]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: May 13, 1992
FILED WITH LRC: May 14, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this administrative regulation will be held on June 25, 1992 at 1 p.m. in Room G-1 of the Capital Plaza Tower in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. All comments must be received in the Division's main office by 4:30 (Eastern time) on June 25, 1992. A transcript of the public hearing may not be made unless a written request for a transcript is made at least five days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation by the close of the comment period. Send written notification of intent to be heard at the public hearing, request for a transcript, or written comments on the proposed administrative regulation to the following contact person: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack A. Wilson

(1) Type and number of entities affected: The amendment to this regulation applies to approximately 2236 treatment and distribution system operators currently certified. It also applies to 859 public water systems. These numbers may vary slightly from month to month due to the construction of new systems, new certifications and the lapsing of others.

(a) Direct and indirect costs or savings to those affected: There are three major changes within this regulation which indirectly impact the certified operator's costs. The number of continuing education hours required of Class I, III and IV operators for certificate renewal have been increased. Depending on the type, length and location of the schools selected, the operators may incur increased costs to obtain the additional 6, 12 and 12 hours respectively. These costs should prove to be minimal, however given the fact that regional, state and national courses qualify as training and operators earning hours in excess of what is required may apply these to the next renewal period. The 859 public water systems should incur indirect savings relative to operation and maintenance of the systems in that operators will be better trained. The Disciplinary Actions section has been expanded to allow for the placement of an operator's certificate on probation, suspension, or temporary revocation. Options for disciplinary action in addition to certificate revocation provides an operator with a direct savings in that the ability exists to maintain his livelihood. The Operator Qualifications section was altered to allow for the substitution of experience for education on a year-for-year exchange. This change will directly affect operators without a college degree in that they will be eligible for certification earlier and the possibility for a raise exists with many facilities. This change will also allow public water systems to meet the staffing requirements at an earlier date, prevent assessment of fines for noncompliance and provide continued employment for operators who upgrade their certification.

1. First year: The education substitution clause will enable many operators to apply immediately for a certificate upgrade. The education substitution clause will assist Class IV water systems to comply earlier with the staffing requirement.

2. Continuing costs or savings: The increase in training hours

required for certificate renewal will be required in June 1994. The training mandated must be accomplished every two years as long as the operator maintains his certificate.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: The reporting and paperwork required of operators for public water systems will not change significantly. Operators and/or their employer will be required to advise the cabinet in writing of address or employment changes. Operator training hours and qualifications are already required to be documented and submitted to the state.

(2) Effects on the promulgating administrative body: There will be no effect on the administrative body. The oversight required relative to the documentation of training and enforcement against an operator is already required under the existing regulation.

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: If operators elect to attend state sponsored training programs to fulfill the renewal requirements, the state could receive additional funds. With the increase in students, however, often comes the need for additional schools and increased costs.

(b) Reporting and paperwork requirements: The reporting and paperwork of the agency will not change. The Division of Water is currently maintaining records on training courses utilized for continuing education purposes, enforcement actions and qualifications of operators.

(3) Assessment of anticipated effect on state and local revenues: If an operator elects to attend a state sponsored class to earn the additional training hours, the state will receive additional revenue. There should be no impact on local revenues unless the local government must hire a certified operator to replace the operator in responsible charge due to suspension or revocation of his certification.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The addition of the January 1, 1993 compliance date for Class III and IV water systems is in direct response to staffing problems incurred by these systems. The increase in training hours required of Class I, III and IV operators is prompted by two factors: 1) Changing regulations and technologies relative to drinking water treatment and distribution and the importance of safe drinking water, make it imperative that operators attend continuing education courses. 2) The increase in training hours will make the drinking water program consistent with the wastewater certification program and reduce confusion. The addition of three new enforcement mechanisms is an effort to provide other means of disciplinary action without costing through revocation the operator's livelihood. Use of these other disciplinary actions will hopefully curb or prevent inappropriate behavior which leads to certificate revocation.

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

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation is tiered to reflect differences in the size and type of public water systems and operator classes.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No__ If yes, complete questions 2-4. This regulation specifies that all drinking water plants and distribution systems must be staffed by properly certified operators who are in responsible charge of the operation. In Kentucky, there are 319 systems owned and operated by local governments. Certified operators are a part of a public water system responsible for providing a service to the local area.

(2) State what unit, part or division of local government this administrative regulation will affect. This regulation will apply to all local governments which own or operate a drinking water treatment plant or distribution system.

(3) State the aspect or service of local government to which this administrative regulation relates. Drinking water treatment plants and distribution systems.

(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 (+/-): No impact.

Expenditures (+/-): See explanation below.

Other Explanation: There is only one change outlined in this regulation that may impact the expenditures and revenues of the local governments. The current regulation, promulgated on November 15, 1990, requires specific staffing requirements for each class level of system. The proposed change gives systems until January 1, 1993 to meet this requirement. Expenditures on the part of the local governments will depend on their ability to meet the staffing requirements with existing operators. Expenditures will be required if a system must employ additional operators, pay for certification or provide incentive pay to those who upgrade their certification. However, unless voluntarily taken on by the utility, all fees under this regulation are the responsibility of the individual operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal statutes require that public water systems be operated by an operator approved by the state. "Certification" of operators is not addressed at the federal level. There are currently 50 states including Kentucky which mandate the certification of water treatment operators.

2. State compliance standards. Kentucky Revised Statute 223.190 specifies that all water treatment plants and water distribution systems, whether publicly or privately owned must be operated under the supervision of a properly certified operator.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate relative to operator certification.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This regulation does impose stricter standards than the federal government, in that a public water system must be operated by a certified operator as required by Kentucky Revised Statute.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky has required that public water systems be operated by a properly certified operator since enactment of the statute in 1966. Given the importance of safe drinking water to the citizens and businesses of the state, it is imperative that these facilities be operated by individuals who are properly certified. This certification means that for a certain class of facility the operator has met certain educational and experience

requirements, passed a certification exam and attends continuing education courses necessary to maintain the certificate.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

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

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, revised May 13, [~~February 14,~~] 1992, are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities [~~(Amended 2/14/92)~~]
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Corrections Cabinet Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
03-01-01	Code of Ethics [~~(Amended 2/14/92)~~]
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10-03-01	Safekeepers [~~(Amended 2/14/92)~~]
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services (Amended 5/13/92)
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.9	Dental Services (Added 5/13/92)
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14-04-01	Legal Services Program
14.6	Inmate Grievance Procedures
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties
15.3	Meritorious Good Time
15-05-01	Restoration of Forfeited Good Time [~~(Amended 2/14/92)~~]
15.6	Adjustment Procedures and Programs
15-07-01	Inmate Account Restriction
16-01-01	Inmate Visits
16.2	Inmate Correspondence
16.3	Telephone Calls
16.4	Inmate Packages
17-01-01	Inmate Personal Property
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates
18.4	Classification of the Inmate
18.5	Custody/Security Guidelines
18.6	Classification Document
18.7	Transfers
18.8	Guidelines for Transfers Between Institutions
18.9	Out-of-state Transfers
18-10-01	Preparole Progress Reports
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
19.1	Government Services Projects
19.2	Community Services Projects
20-01-01	Educational Programs
22.1	Privilege Trips
25-01-01	Gratuities
25.2	Public Official Notification of Release of an Inmate
25.3	Prerelease Program
25.4	Inmate Furloughs
25.6	Community Center Program
25.7	Expedient Release
25.8	Extended Furloughs
25.10	Administrative Release of Inmates
27-01-01	Probation and Parole Procedures
27-02-01	Duties of Probation and Parole Officers
27-03-01	Workload Formula Supervisor/Staff Ratio
27-05-01	Testimony, Court Demeanor and Availability of Legal Services
27-06-01	Availability of Supervision Services
27-06-02	Equal Access to Services
27-07-01	Cooperation with Law Enforcement Agencies
27-08-01	Use of Force
27-09-01	Kentucky Community Resources Directory
27-10-01	Advanced Supervision
27-11-01	Intensive Supervision
27-12-01	Supervision: Case Classification
27-12-02	Risk/Needs Assessment
27-12-03	Initial Interview
27-12-04	Conditions of Regular Supervision/Request for Modification
27-12-05	Releasee's Report
27-12-06	Grievance Procedures for Offenders
27-12-07	Employment, Education/Vocational Referral
27-12-08	Supervision Plan

27-12-09	Casebook
27-12-10	Guidelines for Monitoring Supervision Fee
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
27-15-01	Supervision Report; Violations, Unusual Incidents
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
27-25-01	Application for Final Discharge from Parole
27-26-01	Assistance to Former Clients and Dischargees
27-27-01	Restoration of Civil Rights
27-28-01	Firearms/Explosives: Application for Relief from Disability
27-29-01	Parole Review Dates Modification
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/-Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: May 13, 1992

FILED WITH LRC: May 13, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 22, 1992 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 3,018 employees of the Corrections Cabinet, 9,847 inmates, 13,221 parolees and probationers, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner. KRS 13A.210 requires "A written statement...explaining why tiering was or was not used. The agency did not fully explain why tiering was not used. Tiering was not appropriate in this regulation because the regulation applies equally to all employees, inmates, parolees and visitors. Disparate treatment of any of these classes may produce complaints by that class and could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be violated as well as Sections 2 and 3 of the Kentucky Constitution which prohibit unequal or arbitrary treatment of persons.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

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 May 15

[~~February 14~~], 1992 are incorporated by reference and shall be referred to as Kentucky State Penitentiary 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.

KSP 000000-06	Administrative Regulations
KSP 010000-04	Public Information and Media Communication
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program
KSP 02-12-01	Inmate Personal Funds
KSP 030000-01	Inventory Records and Control
KSP 030000-04	Requisition and Purchase of Supplies and Equipment
KSP 040000-01	Management Information System
KSP 040000-02	Inmate Records
KSP 060000-01	Special Security Unit
KSP 060000-02	Special Management Units: Assignment, Classification Review and Release
KSP 060000-04	Protective Custody Unit
KSP 070000-01	Hospital Services
KSP 070000-02	Sick Call
KSP 070000-03	Health Evaluations
KSP 070000-04	Consultations
KSP 070000-05	Emergency Medical Procedure
KSP 070000-13	Pharmacy Procedures
KSP 070000-14	Medical Records
KSP 070000-16	Psychiatric and Psychological Services
KSP 070000-17	Dental Services for Special Management Units
KSP 070000-19	Optometric Services
KSP 070000-20	Menu Preparation and Planning
KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
KSP 070000-30	Therapeutic Diets
KSP 090000-01	Inmate Work Programs/Safety Inspections of Inmate Work Locations
KSP 09-08-01	Searches and Preservation of Evidence [~~(Added 2/14/92)~~]
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-06	Inmate Mail and Packages
KSP 100000-08	Behavioral Counseling Record
KSP 100000-09	Due Process/Disciplinary Procedures
KSP 100000-14	Property Room: Clothing Storage and Inventory
KSP 100000-15	Uniform Cell Standards for Fire Safety, Sanitation and Security
KSP 100000-18	Inmate Grievance Committee Hearings
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 110000-04	Preparole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee
KSP 110000-07	Statutory Good Time Restoration
KSP 110000-08	Award of Meritorious Good Time
KSP 110000-10	Special Needs Inmates
KSP 110000-12	Unit Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16	Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-18	Functions of the Classification Committee
KSP 120000-07	Community Center Program
KSP 120000-08	Inmate Furloughs
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-31	Extended Furloughs
KSP 120000-32	Discharge of Inmates by Shock Probation
KSP 130000-10	Execution Plan
KSP 15-01-01	Inmate Grooming and Dress Code
KSP 16-01-01	Visiting Program (Revised 5/15/92)
KSP 16-03-02	Inmate Telephone Access [~~(Added 2/14/92)~~]
KSP 17-01-01	Inmate Personal Property
KSP 19-05-01	Correctional Industries
KSP 20-04-01	Educational Programs [~~(Added 2/14/92)~~]

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: May 15, 1992

FILED WITH LRC: May 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 23, 1992 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 346 employees of the Kentucky State Penitentiary, 809 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 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

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

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, revised on May [~~April~~]15, 1992 are incorporated by reference and shall be referred to as Luther Luckett Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

[~~LLCC 01-08-01 Institutional Legal Assistance (Deleted 5/15/92)~~
~~LLCC 01-09-01 Public Information and News Media Access (Deleted 5/15/92)~~]
LLCC 01-12-01 Duty Officer Responsibilities
LLCC 02-01-02 Fiscal Management: Accounting Procedures
LLCC 02-01-03 Fiscal Management: Agency Funds [(~~Revised 4/15/92~~)]
LLCC 02-01-04 Fiscal Management: Insurance [(~~Revised 4/15/92~~)]
LLCC 02-03-01 Fiscal Management: Audits
LLCC 08-01-01 Offender Records
LLCC 08-04-01 Storage of Expunged Records
LLCC 08-05-01 Psychological and Psychiatric Reports
LLCC 10-03-09 Duties and Responsibilities of Building 1 and 2 Officer
LLCC 11-03-01 LLCC Population Categories
LLCC 11-07-01 Adjustment Procedures for Minor Rule Violations
LLCC 11-09-01 Rules and Regulations of the Unit
LLCC 11-13-01 Inmate Dress and Use of Access Areas
LLCC 11-15-01 Postparole Furloughs
LLCC 11-16-01 Restoration of Forfeited Good Time
LLCC 11-18-02 Use of Monitor Telephone
LLCC 11-19-01 Unit Shakedowns/Control of Excess Property
LLCC 11-20-01 Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01 Special Management Inmates
LLCC 12-01-02 Disciplinary Segregation Time Calculation (WTR)
LLCC 13-01-01 Dining Room Guidelines
LLCC 13-04-01 Food Service: Meals
LLCC 13-04-02 Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02 Medical Screening of Food Handlers
LLCC 13-06-01 Food Service: Inspections and Sanitation
LLCC 13-07-01 Food Service: Purchasing, Storage and Farm Products
LLCC 13-08-01 OJT Food Service Training Placement
LLCC 14-01-01 Sanitation, Living Condition Standards, and Clothing Issue
LLCC 14-05-01 Institutional Inspections
LLCC 15-01-01 Health Maintenance Services; Sick Call and Pill Call
LLCC 15-02-01 Mental Health/Psychological Services
LLCC 15-03-01 Pharmacy
LLCC 15-03-02 Use of Psychotropic Medications
LLCC 15-04-01 Dental Services
LLCC 15-05-02 Licensure and Training Standards
LLCC 15-06-02 Specialized Health Services
LLCC 15-06-03 Emergency Medical/Dental Care Services
LLCC 15-06-04 First Aid/CPR Training Program
LLCC 15-06-05 Suicide Prevention and Intervention Program
LLCC 15-07-01 Health Records
LLCC 15-08-01 Special Diets
LLCC 15-12-01 Special Needs Unit
LLCC 15-14-01 Informed Consent
LLCC 15-15-01 Medical Restraints
LLCC 15-16-01 Health Education/Special Health Programs
LLCC 15-17-01 Serious and Infectious Diseases
LLCC 16-01-01 Inmate Rights and Responsibilities
LLCC 16-02-01 Inmate Grievance Procedure
LLCC 16-03-01 Inmate Legal Services
LLCC 17-01-01 Due Process/Disciplinary Procedure
LLCC 18-01-01 Inmate Correspondence
LLCC 18-01-02 Issuance of Legal Mail to Inmate Population
LLCC 18-02-01 Inmate Visiting
LLCC 18-02-03 Extended Visit and Furloughs
LLCC 18-02-04 Meritorious Visits
LLCC 18-03-01 Entry and Identification of Visitors for Inmate Visitation
LLCC 18-03-03 Inmate Visiting Disciplinary Segregation Administrative Segregation
LLCC 20-01-01 Personal Property Control
LLCC 20-02-01 Authorized Inmate Personal Property
LLCC 20-03-01 Unauthorized Items
LLCC 20-04-02 Inmate Canteen
LLCC 20-04-03 Canteen Purchase Limits
LLCC 20-05-01 Inmate Control of Personal Funds
LLCC 20-05-02 Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
LLCC 20-05-03 Theft of Inmate Personal Property
LLCC 20-06-01 Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01 Classification/Security Levels
LLCC 21-03-01 Classification Process
LLCC 22-01-01 OJT/Job Assignments
LLCC 23-01-01 Academic School
LLCC 26-01-01 Religious Services
LLCC 28-01-01 Privileged Trips
LLCC 28-03-01 Temporary Release/Community Center Release
LLCC 28-04-01 Preparole Progress Report
LLCC 28-04-02 Parole Eligibility Dates

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: May 15, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 23, 1992, at 9 a.m., in the Auditorium of the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 285 employees of the Luther Luckett Correctional Complex, 1,026 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 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

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

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, revised May [~~April~~] 15, 1992, are incorporated by reference and shall be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

NTC 01-05-01 Extraordinary Occurrence Reports
NTC 01-10-01 Legal Assistance for Staff
NTC 01-11-01 Political Activities of Merit Employees [~~(Revised 4/15/92)~~]
NTC 01-15-01 Establishment of the Warden as Chief Executive Officer
NTC 01-17-01 Relationships with Public, Media and Other Agencies
NTC 02-02-02 Warden's Participation in the Agency Budgeting Process
NTC 02-03-01 Fiscal Management: Audits
NTC 02-04-01 Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02 Chapel Fund
NTC 02-08-01 Inmate Canteen
NTC 02-10-01 Insurance Coverage
NTC 02-12-01 Inmate Personal Accounts
NTC 04-01-01 Training and Staff Development
NTC 04-04-01 Firearms and Chemical Agents Training
NTC 06-01-01 Offender Records
NTC 06-01-02 Records - Release of Information
NTC 06-01-03 Taking Offender Record Folders onto the Yard
NTC 08-05-01 The Fire and Safety Officer
NTC 08-05-02 Fire Procedures
NTC 08-05-03 Fire Prevention
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01 Safety Standards
NTC 10-01-01 Special Management Inmates (SMU)
NTC 10-02-01 Security Guidelines for Special Management Inmates
NTC 10-03-01 Protective Custody
NTC 11-03-01 Food Services: General Guidelines [~~(Revised 4/15/92)~~]
NTC 11-04-01 Food Service: Meals [~~(Revised 4/15/92)~~]
NTC 11-04-02 Menu, Nutrition and Special Diets [~~(Revised 4/15/92)~~]
NTC 11-05-02 Health Standards and [~~/~~] Regulations for Food Service Employees (Revised 5/15/92)
NTC 11-06-01 Inspection and Sanitation (Revised 5/15/92)
NTC 11-07-01 Purchasing and Storage of Food [~~and Farm~~] Products (Revised 5/15/92)
NTC 12-01-01 Institutional Inspections (Revised 5/15/92)
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens (Revised 5/15/92)
NTC 12-02-02 Issuance of Personal Hygiene Products (Revised 5/15/92)
NTC 13-01-01 Emergency Medical Care Plan (Revised 5/15/92)
NTC 13-01-02 Emergency and Specialized Health Services (Revised 5/15/92)
NTC 13-02-01 Administration and Authority for Health Services (Revised 5/15/92)
NTC 13-03-01 Sick Call and Pill Call (Revised 5/15/92)
NTC 13-04-01 Utilization of Pharmaceutical Products (Revised 5/15/92)
NTC 13-05-01 Dental Services
NTC 13-05-02 Health Maintenance Dental Services
NTC 13-05-03 Dental Radiation Levels
NTC 13-05-04 Attest Steam Incubator
NTC 13-06-01 Licensure and Training Standards
NTC 13-07-01 Provisions for Health Care Delivery
NTC 13-08-01 Medical and Dental Records
NTC 13-09-01 Special Diets
NTC 13-11-01 Inmate Health Screening and Evaluation
NTC 13-12-01 Special Health Care Programs
NTC 13-17-01 Inmates Assigned to Health Services
NTC 13-19-01 Mental Health Care Program
NTC 13-19-03 Suicide Prevention and Intervention Program
NTC 13-20-01 Infectious Disease
NTC 13-20-02 Infection Control
NTC 13-20-03 Disposal of Biohazard Waste
NTC 13-21-01 Vision Care/Optometry Services
NTC 13-22-01 Informed Consent
NTC 13-23-01 Special Needs Inmates
NTC 14-01-01 Legal Services Program
NTC 14-01-02 Receiving and Viewing of Video Tapes
NTC 14-02-01 Inmate Grievance Procedure
NTC 14-03-01 Inmate Rights and Responsibilities
NTC 14-03-02 Board of Claims
NTC 14-04-01 Inmate Search Policy
NTC 15-01-01 Restoration of Forfeited Good Time
NTC 15-02-01 Due Process/Disciplinary Procedures
NTC 15-02-02 Extra Duty Assignments
NTC 15-02-03 Hearing Officer
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail
NTC 15-03-02 Rules and Regulations for General Population Dormitories
NTC 15-03-03 Rules and Regulations for Protective Custody Dormitories
NTC 15-04-01 Inmate Identification
NTC 16-01-01 Mail Regulations
NTC 16-02-01 Visiting
NTC 16-02-02 Extended and Special Visits
NTC 16-02-03 Honor Dorm Visiting
NTC 16-03-01 Inmate Furloughs

NTC 16-05-01	Telephone Use and Control
NTC 17-01-01	Personal Property Control
NTC 17-01-02	Authorized Inmate Personal Property
NTC 17-01-03	Unauthorized Inmate Property
NTC 17-01-04	Disposition of Unauthorized Property
NTC 17-01-05	State Issue and Required Inmate Clothing
NTC 17-03-01	Assessment/Orientation
NTC 18-01-01	Preparole Progress Report
NTC 18-02-01	Classification
NTC 18-02-02	Classification - 48 Hour Notification
NTC 18-03-01	Special Notice Form
NTC 18-05-01	Transfers of Inmates
NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01	Inmate Work Program
NTC 19-01-03	Temporary Leave from Job Assignment
NTC 19-02-01	Correctional Industries
NTC 19-02-02	Guidelines for Correctional Industries
NTC 20-01-01	Academic School Program
NTC 20-02-01	Vocational School
NTC 20-02-02	Live Work Projects in Vocational School Classes
NTC 21-01-01	Library Services
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01	Religious Services
NTC 23-03-01	Marriage of Inmates
NTC 24-04-01	Honor Status
NTC 24-05-01	Unit Management
NTC 25-01-01	Release Preparation Program
NTC 25-01-02	Temporary Release/Community Center Release
NTC 25-01-03	Graduated Release
NTC 25-02-01	Funeral Trips and Bedside Visits
NTC 25-03-01	Inmate Release Procedure [~~(Revised 4/15/92)~~]
NTC 26-01-01	Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: May 15, 1992

FILED WITH LRC: May 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 23, 1992, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 282 employees of the Northpoint Training Center, 919 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 1:035. Group health and life insurance.

RELATES TO: KRS 18A.205, 18A.225, [~~156.031,~~] 161.158

STATUTORY AUTHORITY: KRS 156.070, 161.159

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 18A.205 and 18A.225 authorize the purchase of group life and health insurance for state employees; and KRS 161.158 authorizes local boards of education to administer group insurance coverage for its employees. This regulation provides the basis for Department of Education administration of the group health and life insurance programs for certificated and noncertified employees of local boards of education and interlocal educational cooperatives.

Section 1. Group health coverage shall consist of a single contract or the single contract dollar equivalent applied to any alternate plans of coverage contained in the master contracts between the Commonwealth and the carriers.

Section 2. Group life insurance coverage shall consist of benefit amounts as specified in the master contract between the Commonwealth and the carrier.

Section 3. For the purposes of administration of the group health and life insurance programs for local board employees, the following shall apply:

(1) A regular, full-time noncertified employee is one who is employed with the expectation that he is to be employed for the full school term (or the remainder of the school term) as defined in KRS 158.070, and whose assignments require a minimum of eighty (80) hours per school month as defined in KRS 158.060.

(2) A regular, full-time certified employee is one who is employed with the expectation that he is to perform [~~their~~] duties for the full school term (or the remainder of the school term) as defined in KRS 158.070 but in no instance shall such employment require less than seventy (70) percent of the school day or school month as defined in KRS 158.060.

(3) An interlocal educational cooperative is one composed of two (2) or more local boards of education in order to make educational programs and services more efficiently and effectively available to such local boards of education on a multidistrict basis, and further such cooperative is one governed by an interlocal cooperation agreement as described by KRS 65.210 to 65.300.

(4) Regular full-time certified and noncertified employees shall be ineligible for state contribution for health and life insurance premiums if on leave without pay from the local educational agency or interlocal cooperative. Leave without pay shall include unpaid leave, unpaid

sick leave, unpaid educational leave, and unpaid leave while receiving Workers' Compensation benefits. Unpaid leave is defined as beginning the first day of the month following an employee's last paid working day.

(5) An employee on leave without pay shall not be eligible for state contribution for health and life premiums until the employee has actively returned to work from leave.

Section 4. Each local board of education or interlocal educational cooperative shall provide to the Department of Education accurate employment data on covered employees on a month-to-month basis on such forms and such detail as may be specified by the chief state school officer.

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: May 12, 1991

FILED WITH LRC: May 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 25, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 20, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Rick Dear

(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): None

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Will result in minor reduction of health insurance costs to the state.

1. First year: Estimated to be in the range of $50,000.

2. Continuing costs or savings: $50,000 per year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(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. Applies to everyone the same.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 3:045. Withholding funds.

RELATES TO: KRS [~~156.031,~~] 156.035, 156.070

STATUTORY AUTHORITY: KRS [~~156.031,~~] 156.035, 156.070, 157.320

NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and~~] KRS 156.035 and 156.070 set forth the State Board for Elementary and Secondary Education's plenary powers over the management and control of local school districts and disbursement of state appropriations. This regulation is necessary to insure that all reports and documents are filed as required.

Section 1. The chief state school officer shall be authorized to withhold state funds from any school district in the state which fails[~~, after written notification, to file or~~] to have on file [~~within fifteen (15) days~~] in the Department of Education on the due date any and all reports as required by the statutes or the rules and regulations of the State Board for Elementary and Secondary Education.

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: May 12, 1992

FILED WITH LRC: May 15, 1992 at 10 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 25, 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 June 20, 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: Ron Moubray

(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: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: Establishes absolute time frame (due date) for withholding funds if required reports are not in.

TIERING: Was tiering applied? No. All districts treated equally.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 3:250. Preschool grant allocations.

RELATES TO: KRS 156.160, 157.226, 157.3175

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.226, 157.3175

NECESSITY AND FUNCTION: KRS 156.160 authorizes the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which school districts shall meet in student, program, service and operational performance; KRS 157.226 authorizes preschool programs and related services for handicapped children who are three (3) or four (4) years of age or who may become age five (5) after October 1 of the current year and authorizes the State Board for Elementary and Secondary Education to promulgate regulations regarding the use of funds; and KRS 157.3175 authorizes preschool education programs for four (4) year old children who are at risk of educational failure and authorizes the State Board for Elementary and Secondary Education to establish a grant allocation system. This administrative regulation is necessary to implement those state board duties.

Section 1. Preschool Programs. For the purposes of this regulation, the term "preschool programs" refers to the two (2) educational programs established in the KRS 157.226 and 157.3175 for children below primary school age; the preschool program for handicapped children and the preschool education program for four (4) year old children.

Section 2. Funding Eligibility. (1) Children eligible to be counted for funding purposes for the preschool program for four (4) year old children shall include only those children who are at risk of educational failure and who meet the criteria set forth in 704 KAR 3:410, Section 1(1).

(2) Children eligible to be counted for funding purposes for the preschool program for handicapped children shall include only those children who meet the criteria set forth in 707 KAR 1:150, Section 1(2).

(3) A child who meets the eligibility criteria under both subsections (1) and (2) shall be included in only one (1) of these two (2) groups for purposes of generating funds under these preschool programs.

(4) Eligible children who are enrolled by parent choice in other preschool programs providing nonsupplemental educational services through state or federal funds at no cost to parents shall not be included in the count of eligible children used to generate funds under these preschool programs.

Section 3. Enrollment Data. (1) Funds for districts shall be allotted based on the number of eligible children as defined in Section 2 of this regulation who are enrolled in the district's preschool programs on December 1 of the previous year. Program funding shall be adjusted proportionately when enrollment on September 30 of the current year is more than five (5) percent above or below the number of children served on December 1 of the previous year.

(2) A supplemental enrollment count shall be taken after December 1 to allow partial funding for children with disabilities who become three (3) years of age after December 1 and who are enrolled after that date.

(3) If there are available funds after districts have been allotted funds to serve all eligible enrolled children through the state funds appropriated, then the remaining funds may be prorated to those districts that transport eligible children who are enrolled in Head Start, up to the amount per child allowed for transportation in Section 5 of this regulation.

[~~(2) Funding for the preschool programs in 1991-92 shall be based on the number of eligible children who are enrolled on September 30, 1991.~~

~~(3) After the 1991-92 school year, funding for the preschool programs shall be based on enrollment data from the district's operation of the preschool program in the previous year.~~]

Section 4. Use of Funds. (1) Appropriations to the local school district for the preschool programs shall be separate and apart from all other funds appropriated to the local school district.

(2) Use of the funds appropriated for the preschool programs shall be limited to activities for the implementation of these programs, pursuant to 704 KAR 3:410, 707 KAR 1:150, and the district's application for the preschool programs.

Section 5. Formula. The Preschool Allocation Formula, May, 1992 [~~1991~~], specifying the amount of funds to be allocated for each eligible child for 1992-93 and 1993-94 [~~1991-92~~], is hereby incorporated by reference. Such may be inspected, copied, and obtained at the Office of Learning Programs Development [~~Instruction~~], 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. If the state funds appropriated are not sufficient, the funding formula shall be adjusted proportionately.

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: May 12, 1992

FILED WITH LRC: May 14, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 25, 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 June 20, 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: Debbie Schumacher

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: Decreased local cost due to increase in state per child reimbursement rate and adjustments on enrollment numbers.

1. First year: $50 per child increase in transportation reimbursement; partial reimbursement for children enrolled late; adjustments if increased or decreased enrollment.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional.

(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 - reflects Executive Budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Partial funding levels apply to all districts and children.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 7:050. Attendance; resident, nonresident.

RELATES TO: KRS [~~156.031,~~] 157.320, 157.360, 158.030, 158.240, 159.035, 161.200

STATUTORY AUTHORITY: KRS 156.070, 157.320, 158.070

NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;~~] KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Educational Excellence in Kentucky Program; KRS 157.360 bases state funding upon average daily attendance; KRS 158.030 defines the minimum age for school attendance; KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities; and KRS 161.200 requires attendance records to be kept by teachers. Regulations are necessary to assure uniformity in recording attendance of all pupils in the schools of Kentucky.

Section 1. The word "pupil" as the basis for average daily attendance as provided for in Kentucky Revised Statutes and for all other uses in the public school system shall mean all persons who are in attendance at school between the ages of five (5) and twenty-one (21) years. Any pupil who meets requirements of KRS 158.030 for entering school shall be considered five (5) years of age for attendance purposes.

Section 2. (1) Daily attendance: average daily attendance for educational funding. The daily attendance of pupils shall be determined by checking their attendance at least twice per day. Schools, grades, or homerooms may designate the most appropriate time to check attendance, but recording shall be such that half-day or all day attendance is recorded as defined in Section 3 of this regulation. A pupil may be counted in attendance, while not physically present in the classroom if:

(a) The pupil is absent as a participant in a school activity which has been authorized by the local board of education and which is a definite part of the instructional program of the school; or

(b) The pupil is absent as a participant in an activity as provided in either KRS 158.240 or KRS 159.035. Pupils shall not be counted in attendance for determining average daily attendance when they are spectators at school activities.

(2) Daily attendance: recognition purposes. Individual schools, grades, or homerooms shall be permitted to grant attendance awards, based upon a pupil's attendance in school for less than full days. A pupil who is in attendance for at least one (1) instructional period may be deemed present for the day for attendance award and recognition purposes.

Section 3. (1) Pupils shall not be counted in attendance unless they are physically present in the school. They shall be counted absent although such absence is due to factors beyond their control such as inclement weather or failure of the transportation system to operate.

(2) Occasional absences shall be reported in increments of one-half (1/2) day. Notwithstanding the provisions of Section 2 of this regulation, a pupil who is absent for at least two (2) consecutive instruction periods in any regularly scheduled day shall be considered, and recorded, absent for one-half (1/2) day. A pupil who is absent for at least five (5) consecutive instructional periods in a regularly scheduled day shall be considered, and recorded, absent for the full day. In the event a school regularly schedules more than seven (7) periods per day, one-half (1/2) or all day absence shall be recorded based upon three (3) and six (6) consecutive instructional periods absence, respectively.

(3) Absences on a regular basis for one (1) or more periods for the majority of the days in a school month shall be reported on a period basis. Districts shall not vary the schedule of students during the school month in order to circumvent the intent of this subsection.

Section 4. (1) Pupils enrolled in both a public common school and a nonpublic school under a dual enrollment plan shall be counted in attendance for ADA purposes for the time they are in attendance at the public school under straight shared-time.

(2) "Straight shared-time" is defined as an arrangement whereby a child regularly or concurrently attends a public common school part-time and a nonpublic school part-time pursuing part of his education under the direction and control of the public common school and the remaining under the direction of the nonpublic school.

Section 5. Pupils enrolled in a public common school and attend the public common school one-half (1/2) day and who attend the remainder of the school day in a state vocational technical school or an area vocational education center shall be counted in full-time attendance at the public common school.

Section 6. If a local district under the provisions of KRS 157.360, enrolls handicapped children in a private school or agency approved by the State Board for Elementary and Secondary Education upon the recommendation of the Office of Education for Exceptional Children, the private school or agency shall certify the attendance of these children to the Department of Education at the close of the second school month and at the close of the school year. This attendance shall be counted in a public school designated by the local district.

Section 7. No pupil shall be allowed to make up absences for the purpose of counting such make-up activities in computing average daily attendance.

Section 8. (1) A copy of the written agreement local boards of education execute for average daily attendance of nonresident pupils as provided by KRS 157.350(4) [~~, and the attendance report (Growth Factor Report) for the first two (2) months of the current school year as required by KRS 157.360(8)~~] shall be submitted to the State Department of Education prior to November 1 [~~15~~] of each year. Names of nonresident pupils, whose attendance is covered by the agreement, shall be listed on the back of the agreement on file in the office of the local board of education and also on the back of the copy of the agreement filed with the State Department of Education.

(2) An attendance report (Growth Factor Report) for the first two (2) months of the current school year as required by KRS 157.360(8) shall be submitted to the State Department of Education prior to November 1 of each year. The Growth Factor Report shall contain number of days taught, transportation data for months one (1) and two (2) separately, the aggregate attendance for the two (2) months, and the aggregate membership for the two (2) months. Kindergarten data shall be reported for full-time equivalent days. Until such time as the primary school program, as required by KRS 156.160(1a) and KRS 158.030, is fully implemented, all attendance and Growth Factor Report data shall be reported by school and by grade [~~Names of nonresident pupils, whose attendance is covered by the agreement, shall be listed on the back of the agreement on file in the office of the local board of education and also on the back of the copy of the agreement filed with the State Department of Education~~].

(3) Changes may be made in the original nonresident pupil agreement, up to the close of the school year, to include only the nonresident pupils enrolling after the close of the second school month. A copy of the amended agreement shall be on file in the office of the local board of education and a copy of the amendment submitted to the State Department of Education along with the local superintendent's annual statistical report, no later than June 30 of the current school year.

(4) In the event local boards of education fail to enter into a written agreement for nonresident pupils as outlined in subsections (1) and (2) of this section, the local board of education educating the nonresident pupils shall not receive attendance credit for these nonresident pupils.

(5) Directors of pupil personnel in each local district shall certify student membership, as reported to the Department of Education on the school data form, of each school as of the end of the first month of school. They shall also certify, on a supplement to the school data form, reported average daily attendance for the first school month. The school data form, as revised April 1992, is incorporated herein by reference. Such document may be inspected and copied at the Division of Technology Integration, Department of Education, 16th Floor, Capital Plaza Tower, 8 a.m. to 4:30 p.m., Monday through Friday. The supplement to the school data form shall report average daily attendance by school and by grade.

Section 9. The teacher's register of daily attendance or reasonable facsimile recommended by the chief state school officer and approved by the State Board for Elementary and Secondary Education shall be the original source of attendance data for all pupils enrolled in the public elementary and secondary schools of the Commonwealth of Kentucky and shall be maintained in accordance with the instructions which are prepared and distributed by the State Department of Education.

Section 10. If a local board of education elects to follow the provisions of KRS 161.200(2) for keeping and reporting pupil attendance, the board shall submit a written plan to the chief state school officer for approval. A copy of the approved plan shall be on file in each public school.

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: May 12, 1991

FILED WITH LRC: May 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 25, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 20, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Rendell T. Butler

(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: 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: Requires one additional report which is critical to forecasting SEEK budget.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: 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: None

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All districts treated equally.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 156.0951, 158.070
STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070
NECESSITY AND FUNCTION: KRS 156.095 and 156.0951 authorize the State Board for Elementary and Secondary Education to establish, direct, and maintain a statewide program of professional development training, with the relevant purpose of such a program being the improvement of instruction in the public schools, and mandate local school district consortia for professional development purposes; and KRS 158.070 requires the state board to adopt regulations setting forth guidelines and procedures to be followed for the approval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for professional development activities for the professional staff. This regulation implements these duties and powers by interpreting of what professional development consists and by requiring each local district and [~~or~~] consortium of districts to have approved annually a master professional development plan by which it is to be guided in providing suitable professional development training programs and in requiring all instructional leaders to participate in the statewide training program implemented under KRS 156.101.

Section 1. Professional development shall mean any training of certified personnel to assist them in acquiring the knowledge and skills needed for instructional improvement. The data, skills, and concepts comprising the substance of the training programs shall be determined by identified needs related to the components of the Kentucky Education Reform Act (KERA) in the instructional, administrative and support services of the school system. The components of KERA include:

(1) Preschool program;
(2) Primary program;
(3) Kentucky's learning goals, valued outcomes, and the noncognitive school goals;
(4) Research-based instructional strategies;
(5) Development of school curricula aligned with KERA learning goals, the valued outcomes, and the noncognitive school goals;
(6) Education technology;
(7) Learning and assessment for diverse populations;
(8) School-based decision making; and
(9) Leadership development.

Section 2. Each local district board of education shall have on file with the State Department of Education an approved master professional development plan. The plan shall include the following components:

(1) Name of local school district;
(2) Name of professional development coordinator;
(3) Names of local school district's professional development committee, which shall be a representative body of all role groups [~~areas~~] or levels of educational personnel within the local school district;
(4) Description of planning process;
(5) [~~(4)~~] Description of needs assessment, including a brief description of procedures implemented to determine how the district's professional development needs were assessed and the results of the assessment;
(6) [~~(5)~~] Statement of district's instructional improvement goal(s), which shall be based on identified needs and which shall include but shall not be limited to the completion of the requisite training hours by all instructional leaders, as defined by KRS 156.101, regardless of the date of initial certification of the instructional leaders. The training hours for instructional leaders may be completed as a part of the statewide program, either during the regular school term or during the summer;
(7) [~~(6)~~] Statement of district's professional development objectives, which shall provide direction for education personnel in the attainment of the district's instructional improvement goals and shall include but shall not be limited to the completion of the above-defined requisite training hours for all instructional leaders;
(8) [~~(7)~~] A description [~~listing~~] of specific professional development sessions/experiences [~~activities and a justification of the activities with respect to the local professional development plan and KRS 156.095~~]; and
(9) [~~(8)~~] Description of evaluation, including:
(a) A summary of how professional development sessions/experiences [~~programs~~] implemented and operated by individual local school districts shall be evaluated; and
(b) A summary of how the implementation of the master professional development plan shall be evaluated.

Section 3. (1) [~~During the 1991-92 school year,~~] The [~~preliminary~~] professional development plan shall address any local district instructional improvement or training needs that are in accordance with the components of KERA [~~mandated areas listed in KRS 156.095 and 704 KAR 3:005~~].
(2) Professional development activities shall be related to teachers' instructional assignments and administrators' professional responsibilities. Activities shall support the local school district's instructional improvement goals and objectives identified in the master professional development plan.
(3) Activities for professional development credit of classroom teachers shall not supplant any of the six (6) hour instructional day.
(4) Professional development activities shall not occur on snow days. Districts may, however, report flexible professional development activities on snow days. This situation involves a calendar change only; it does not result in activities on snow days.
(5) Professional development credit shall not be awarded for college graduate courses that lead to a change in rank or certification status. Exceptions may be made for university courses that are clearly supportive of the participating district's master professional development plan.
(6) Professional development credit shall not be awarded for those activities that provide remuneration beyond travel, food and lodging.
(7) Districts implementing a flexible professional development schedule shall award professional development credit for any given academic school year within the date limitations of the master professional development plan.
(8) Approvable professional development activities are those which address instructional improvement for the school district, an individual school or a group of teachers in the components of KERA [~~areas required by KRS 156.095~~]. Activities which are not approvable for professional development credit include, but are not limited to, the following: organizational business meetings, compiling class rosters, scheduling, textbook adoption committee meetings, writing lesson plans, housekeeping duties, faculty meetings, extracurricular activities; PTA/PTO meetings, sporting events, field trips, parent-teacher conferences, and CPR training[~~, and Kentucky Teacher Internship Program update training~~].

Section 4. (1) Each superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator.
(2) The minimum qualifications for the appointment shall be a

valid Kentucky certificate as a principal or supervisor.

(3) The duties of the professional development coordinator as follows:

(a) Facilitates needs assessments for professional development and the development of goals and objectives for training programs and projects. Beginning in July, 1991, needs assessments and development of goals and objectives shall be carried out in conjunction with the school council or professional development committee of each school [~~participating in school-based decision-making within local district policy~~].

(b) Provides technical assistance to school council or professional development committee in the establishment of a school plan for professional development.

(c) [~~(b)~~] Completes, in conjunction with the consortium, master professional development plan for inclusion in the Educational Improvement Plan.

(d) [~~(c)~~] Serves as chairperson of district's Professional Development Committee.

(e) Coordinates the planning, implementation and evaluation of the [~~(d) Plans, organizes, implements, and evaluates~~] professional development program in conjunction with the school and district professional development committees and the consortium.

(f) [~~(e)~~] Meets regularly with administrators and teachers to establish future goals and identify specific training needs of the district's personnel.

(g) [~~(f)~~] Coordinates the establishment of procedures, timetables, preparation of necessary forms and letters, assignment of workshop sites and all other practical elements of professional development training.

(h) [~~(g)~~] Maintains all professional development records, documentations, and other pertinent records.

(i) [~~(h)~~] Interprets the professional development programs' objectives, results, and needs to district staff, the board, civic and parent groups, teacher training institutions and others as appropriate.

(j) [~~(i)~~] Keeps updated on current professional development trends.

(k) [~~(j)~~] Maintains continuous liaison with Kentucky Department of Education, the consortium to which the district belongs and other agencies involved with the district in the provision of professional development activities.

Section 5. By the effective date of this regulation, each local school district and [~~or~~] consortium shall develop [~~submit to the Department of Education~~] a [~~preliminary~~] professional development plan. This plan shall describe training activities which the district and [~~or~~] consortium wish[~~es~~] to provide for its certified staff within the components of KERA. The consortium plan, along with the plans of its member districts must be submitted to the Department of Education prior to the implementation of the plans. [~~using the services of the Department of Education during the 1991-92 school year. It shall also describe services of its consortium during the 1992-95 school years.~~]

Section 6. Additional standards for approval of the district and consortium professional development plans are located in the document, "Planning Professional Development with a Focus on KERA: The Development and Approval Process for School Districts and Consortia", which is hereby incorporated by reference. This document was approved in March 1992, and can be obtained from the Division of Professional Development, 18th Floor, Capital Plaza Tower, Frankfort, Kentucky any time between 8 a.m. - 4:30 p.m. on Monday through Friday. [~~Beginning in July, 1992, each consortium formed shall submit to the Department of Education an annual professional development plan describing training activities for its member districts. This plan shall be based upon the member district's needs as reported to the consortium by each district's professional development coordinator.~~]

Section 7. No more than twenty-five (25) percent of each local district's professional development funds shall be used by the consortium for administrative purposes.

Section 8. When implementing professional development programs under KRS 158.070, each local school district or consortium of districts shall adhere to its approved master professional development plan as developed with technical assistance provided from the Department of Education.

Section 9. Any local district not complying with Sections 1 through 8 of this regulation shall be required to personally appear through appropriate representatives before the State Board for Elementary and Secondary Education in order to offer explanation for any noncompliance.

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: May 12, 1992

FILED WITH LRC: May 14, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 25, 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 June 20, 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: Rita Osborne

(1) Type and number of entities affected: 176 school districts.

(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):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All 176 school districts must comply with regulations.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 3:325. Effective Instructional Leadership Act.

RELATES TO: KRS 156.101

STATUTORY AUTHORITY: KRS 156.070, 156.101

NECESSITY AND FUNCTION: KRS 156.101 requires the State Board for Elementary and Secondary Education to establish specific criteria for implementing a statewide instructional leader improvement program for employees of the public schools holding valid certificates and performing responsibilities as principals, assistant principals, supervisors of instruction, guidance counselors or directors of special education. This regulation establishes and sets criteria for such a program.

Section 1. Definitions. (1) Instructional leader - a certified employee who is performing the responsibilities as principal, supervisor of instruction, guidance counselor, or director of special education.

(2) Training provider - an established educational organization or private educational consultant who sponsors training programs.

(3) Presenter - person who conducts the training program. The presenter can also be a training provider.

(4) Training activity [~~program~~] - a structured improvement experience [~~workshop or series of workshops~~] focused on a specific goal with established objectives, activities, and procedures for evaluation.

(5) Professional Development Standards Advisory Council - Council appointed by the Commissioner of Education to assist the Department of Education in reviewing and approving specific training activities.

Section 2. By July 13, 1994 [~~1992~~], and every two (2) years thereafter, each instructional leader employed by the public schools of the Commonwealth shall participate in an intensive and continuing training program of no less than forty-two (42) participant hours of instruction approved by the State Board for Elementary and Secondary Education. Completion of the required participant hours shall be reported, and penalties for nonparticipation in the program invoked, in accordance with KRS 156.101(4).

Section 3. (1) Participation in the program is required for all those certified and employed at least one-half (1/2) time as instructional leaders. Under the provisions of 704 KAR 3:035 (annual professional development plan), local school districts are required to develop a plan for instructional leadership training as part of their Master Professional Development Plan.

(2) Instructional leaders must obtain the approval of the local superintendent or designee when selecting specific training offerings from the state-approved directory. [~~The approval of specific training for instructional leaders, as well as the selection of approved providers of such training shall be determined by the superintendent or designee of the local district.~~]

(3) Every two (2) years, each local school district shall send a verification form to the Kentucky Department of Education, recording the names of all instructional leaders, their position titles, their social security numbers, the dates they entered the two (2) year cycle, and the number of hours of training obtained during the two (2) year cycle.

(4) All participant verification forms and certificates shall be kept on file for six (6) years by each local district for each participant. In the event that a participant changes districts, the original file shall be sent to the instructional leader and a duplicate copy to the new district.

Section 4. (1) Instructional leaders shall participate in a training program designed to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth. [~~The State Board for Elementary and Secondary Education may approve~~] Agencies, [~~or~~] institutions, and private educational consultants defined hereinafter as providers, may be approved to design, implement, and evaluate such training. Specific training activities [~~programs~~] approved within the program by the Department of Education and the Professional Development Standards Advisory Council [~~State Board for Elementary and Secondary Education~~] shall be:

(a) Intensive and designed specifically for instructional leaders. Participation shall occur during the contract period including extended employment, if applicable. Training shall be scheduled so as to minimize disruption of the instructional program of the district.

(b) Competency-based, specifying instructional leadership competencies to be mastered by participants. Competencies may have general applicability for instructional leaders or may be role-specific. The degree of competencies to be mastered shall be compatible with the stage of participant development for which the activity is designed. [~~Based on identified needs, the department may allow credit for required specific training.~~]

(c) Comprehensive in nature and shall meet identified needs of the Kentucky Education Reform Act (KERA). The needs include training in:

1. Preschool program;
2. Primary program;
3. Kentucky's learning goals, valued outcomes, and performance assessment of valued outcomes;
4. Research-based instructional strategies;
5. Development of school curricula aligned with KERA learning goals, the valued outcomes and the noncognitive school goals;
6. Education technology;
7. Learning and assessment for diverse populations;
8. School-based decision making; and
9. Leadership development necessary for implementing KERA.

(d) Based on identified needs, the state department may allow credit for required specific training. [~~Needs shall be identified as described in the program content, Section 4 of this regulation. To meet the criterion of comprehensiveness, a program shall contain the pertinent interrelated aspects of a broad competency area. This requirement shall not preclude approved subcontracting by providers for program components.~~

~~(d) Characterized by follow up activities to document the application of acquired competencies. To the optimum extent possible, these activities shall occur on the employment site.~~]

(e) Evaluated in terms of program content, instructional processes, and impact upon participants. Specifically, participant application of competencies shall be verified by random sampling utilizing local school district provider, and participant data.

(2)(a) During the initial two (2) year cycle of instructional leadership training in a job category, the instructional leader may count six (6) hours of credit toward the required forty-two (42) hours for attendance at conferences of established professional education organizations. After an instructional leader has completed the initial two (2) year cycle in a job category, he or she may count up to twelve (12) hours of credit per training cycle for attendance at education conferences. An instructional leader may acquire a maximum of six (6) hours of credit for each conference attended. [~~Such conferences shall be congruent with the instructional leader's annual growth plan and approved by the local superintendent or designee prior to attendance. Such conferences shall be submitted to the Kentucky~~

~~Department of Education and the Kentucky State Board for Elementary and Secondary Education. When approved by the Kentucky State Board for Elementary and Secondary Education,~~] Instructional leaders shall be awarded certificates by their local district upon verification of attendance.

(b) Professional education organizations which [~~who~~] sponsor conferences may apply for full hour-for-hour instructional leadership training credit by submitting a proposal to be reviewed and approved by the Kentucky Department of Education and the Professional Development Standards Advisory Council. [~~approved by the Kentucky State Board for Elementary and Secondary Education.~~]

(3) The two (2) year cycle to which a training program shall be applied is determined by the date on which the last contact hour of a training program occurs. The two (2) year cycle is divided into halves for the purpose of prorating the forty-two (42) hour requirement of one who may become a participant after the beginning date of a two (2) year cycle. The halves and hour requirements are as follows:

(a) July 14 - July 13, first year of cycle - forty-two (42) hours by the end of the two (2) year cycle.

(b) July 14 - July 13, second year of cycle - twenty-one (21) hours by the end of the year.

(4) At the end of the two (2) year cycle a participant's verification of attendance at approved Effective Instructional Leadership Training sessions and programs and copies of program certificates shall be recorded with the administrator's school district.

(5) Excess hours (not to exceed twenty-one (21)) earned by a participant during the forty-three (43) day period of June 1 through July 13 at the end of a two (2) year cycle may be carried forward to the next two (2) year cycle and credited toward required hours for that cycle.

Section 5. The training program content shall consist of specific competencies consistent with the following definition of instructional leadership: Instructional leadership is the process of encouraging and modeling appropriate academic expectations of students and teachers in a positive school climate with affective, physical, and social needs to be considered as they relate to the cognitive development of students. The leadership competencies for the improvement of instruction for children and youth relate to an understanding of the teaching and learning process as well as to the supportive and evaluative functions of the instructional leader.

Section 6. Identification of needs shall provide the basis for the definition of specific instructional leadership competencies to be addressed within the parameters of the above definition.

Section 7. The provider of the training program shall:

(1) Develop programs which meet the criteria identified above;

(2) Select program faculty who have adequate, pertinent training and education, appropriate experience, and the ability to instruct effectively;

(3) Meet identified needs consistent with the definition of instructional leadership cited in Section 4 of this regulation;

(4) Identify in all informational literature the two (2) year cycle for which approval is granted, [~~and~~] the specific category(ies) of instructional leader for which training is approved, the stage of participant development for which the activity is designed and the approval number assigned by the Department of Education;

(5) Conduct training as set forth in its proposal and as approved by the State Board for Elementary and Secondary Education;

(6) Award participants Kentucky Department of Education certificates of attendance and document, through an attendance roster for each training session, participation of instructional leaders to the local district superintendent and the Department of Education; and

(7) Evaluate the training in terms of its content, instructional processes and impact upon the professional behavior of participants.

Section 8. (1) The State Department of Education [~~Board for Elementary and Secondary Education~~], upon recommendation of the Professional Development Standards Advisory Committee [~~chief state school officer~~], shall perform the following duties:

(a) Approve training activities [~~programs~~] and providers; [~~and the Department of Education shall~~]

(b) Maintain and distribute a directory [~~list~~] of approved activities [~~programs~~] and providers; and

(c) Evaluate each training activity at least yearly to ensure quality control.

(2) Those activities not meeting the set standards shall be deleted from the state directory of approved activities.

Section 9. (1) Approval shall be granted for a period of up to two (2) consecutive years. Continuation of approval for another two (2) year period shall be granted upon receipt of a statement of request from the provider. [~~The chief state school officer may revoke such approval if the provider does not implement the approved training program.~~]

(2) In order to protect bona fide institutions and organizations and to protect citizens of the Commonwealth from fraudulent practices, unfair competition and substandard educational training programs, the Kentucky State Board for Elementary and Secondary Education shall require that a provider seeking program approval meet the following criteria:

(a) An established organizational structure including a legally chartered or organized status or an interagency agreement;

(b) Legally appropriate officers or a governing body, membership representative of the education profession, and a verifiable domicile; and

(c) A record of effective sponsorship of in-service activities.

(d) Local districts and educational cooperatives may qualify as providers.

(3) Determination of approval as a provider shall be based upon:

(a) Submission of a provider's training program proposal to the Department of Education within thirty (30) [~~sixty (60)~~] days prior to the initial presentation of the training activity [~~State Board for Elementary and Secondary Education meeting at which approval is requested~~];

(b) Specific program criteria; and

(c) [~~Program~~] Content focused on KERA components, addressing specified competencies of instructional leadership and specific categories of instructional leaders identified in training proposals.

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: May 12, 1992

FILED WITH LRC: May 14, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 25, 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 June 20, 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 regula-

tion to: Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rita Osborne

(1) Type and number of entities affected: 176 school districts.

(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):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All 176 school districts must comply with regulations.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(Proposed Amendment)

780 KAR 3:020. Compensation plan.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY AND FUNCTION: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive regulations consistent with the provisions of KRS 151B.035 which govern the pay plan for all certified and equivalent staff and unclassified staff in the Department for Adult and Technical Education. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Appointments. New certified or equivalent employees or reentering certified or equivalent employees shall be appointed at the salary specified on the salary structure for certified and equivalent employees commensurate with education rank and experience. An employee in an administrative position may be provided an index adjustment commensurate with the scope of administrative or supervisory responsibility in addition to the base salary as specified for the particular job classification.

Section 2. Salary Adjustments. (1) Promotion.

(a) A certified or equivalent employee who is promoted shall receive a salary increase of not less than five (5) percent unless his current salary is beyond the minimum on the salary schedule. If the employee's salary is above the minimum, then the five (5) percent increase shall be at the discretion of the appointing authority.

(b) A certified or equivalent employee promoted to an unclassified position in the Department for Adult and Technical Education shall receive a salary increase of not less than five (5) percent upon promotion unless his current salary is beyond the minimum. If the employee's salary is above the minimum, then the salary increase shall be at the discretion of the appointing authority. In no case shall the employee's salary be below the minimum rate of the higher classification following promotion. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the commissioner may grant upon promotion a ten (10) percent to twenty (20) percent salary increase over the employee's previous salary. Upon the successful completion of a one (1) year promotional probationary period, a certified or equivalent employee may receive at the discretion of the commissioner a five (5) percent promotional increase at the beginning of the month following completion of the probationary period.

(2) Demotion. A certified or equivalent employee in the Department for Adult and Technical Education who is demoted shall have his salary adjusted to not more than sixty (60) percent above the proper cell. This salary shall not exceed ninety-five (95) percent of the salary which the employee was receiving prior to the demotion. [~~to the proper cell or to the previous salary plus normal salary adjustments awarded to certified and equivalent employees on July 1 of each year.~~] An unclassified employee in the Department for Adult and Technical Education who is demoted to a certified or equivalent position shall have his salary adjusted to not more than sixty (60) percent above the proper cell. This salary shall not exceed ninety-five (95) percent of the salary which the employee was receiving prior to the demotion. [~~the proper cell or to the previous certified or equivalent salary plus normal salary adjustments awarded to certified and equivalent employees on July 1 of each year while in the unclassified system on the salary structure for certified and equivalent employees.~~]

(3) Rank changes. A certified or equivalent employee shall have a salary adjustment retroactive to July 1 for educational rank changes which are confirmed by September 1 of each year.

(4) Other salary adjustments.

(a) The Commissioner for Adult and Technical Education may authorize performance bonuses in lump sum payments for outstanding job performance for nonprobationary status employees in any fiscal year in which monies are available. The criteria for such awards shall be approved by the State Board for Adult and Technical Education.

(b) Educational achievement increases shall [~~will~~] be honored for those employees who have an approved educational achievement award agreement on file in the Division of Personnel Services as of July 1, 1990. This provision shall [~~will~~] expire when previous commitments have been met.

Section 3. Salary Advancements. (1) The salary structure for certified and equivalent employees shall be adjusted by September 30 of each year. All certified and equivalent staff shall [~~will~~] receive a salary increase not less than the percentage increase provided other state employees. This [~~Such~~] increase shall be provided July 1. Salary adjustments for those entitled employees shall be retroactive to July 1 of each year once the salary schedule is confirmed by September 30 of each year.

(2) Annual salary increments for unclassified employees shall occur commensurate with each person's established increment date.

Section 4. Paid Overtime. When applicable, certified and equivalent employees and unclassified employees shall be awarded overtime payments in accordance with the Fair Labor Standards Act, 29 US §201 et seq.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: April 22, 1992

FILED WITH LRC: April 27, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 25, 1992 at 9 a.m. (EDT) in the Third Floor Conference Room, Room 306, Capital Plaza Tower, Frankfort,

Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 20, 1992, five days prior to hearing, of their intent to attend. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult and Technical Education, Room 302, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock

(1) Type and number of entities affected: The portion being amended will affect any certified/equivalent state employee in the Department for Adult and Technical Education who may take an assignment at a lower class. (Estimated 10-20 per year.)

(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: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This is an administrative option that allows for fair treatment of employees in the department who wish to transfer into a certified or equivalent position with less responsibility with an unreasonable wage penalty. The proposed changes are consistent with precedent under KRS Chapter 18A.

TIERING: Was tiering applied? No. Tiering was considered but it is not appropriate for this regulation. A uniform policy is needed for all people who may be affected by this regulation.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:307. Adoption of 29 CFR Part 1910.101-.120.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.101-.120 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.101(b), "Compressed Gases," shall be amended by revocation of referenced pamphlets P-1-1965 and the adoption of P-1-1974, herein filed by reference.

(2) The amendment to 29 CFR 1910.103(a)(1) (ii), "Hydrogen," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(3) The amendment to 29 CFR 1910.103, "Hydrogen," as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(4) 29 CFR 1910.106, "Flammable and Combustible Liquids" is amended as follows:

(a) 29 CFR 1910.106(a)(3) shall read: "The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(b) The amendment to 29 CFR 1910.106(a)(35), "Flammable and Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(c) 29 CFR 1910.106(g)(1)(i)(g), "Flammable and Combustible Liquids," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is removed.

(d) Amendment to 29 CFR 1910.106, "Flammable and Combustible Liquids," as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(5) The amendment to 29 CFR 1910.107(a)(8), "Spray Finishing Using Flammable and Combustible Materials," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(6) The amendment to 29 CFR 1910.108(a)(3), "Dip Tanks Containing Flammable or Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(7) The amendment to 29 CFR 1910.109(d)(2) (iii)(a), "Explosives and Blasting Agents," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(8) The amendment to 29 CFR 1910-109, as published in the Federal Register, Volume 57, Number 36, February 24, 1991, is incorporated by reference.

(9) [~~(8)~~] The amendment to 29 CFR 1910.110, as published in the Federal Register, Volume 55, Number 151, is incorporated by reference.

(10) [~~(9)~~] The amendments to 29 CFR 1910.110(a)(14), (b)(2)(iii), (c)(5)(i)(g)(l) and (f)(5)(iv), "Storage and Handling of Liquefied Petroleum Gases," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(11) [~~(10)~~] The amendment to 29 CFR 1910.110, as published in the Federal Register, Volume 55, Number 119, June 20, 1990, is incorporated by reference.

(12) [~~(11)~~] The amendments to 29 CFR 1910.111(b)(1) (ii) and the new paragraph 1910.111(b)(1)(vi), "Storage and Handling of Anhydrous Ammonia," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(13) 29 CFR 1910-119, as published in the Federal Register, Volume 57, Number 36, February 24, 1991, is incorporated by reference, with the following additions, exceptions, or deletions: The

corrections to 1910.119, as published in the Federal Register, Volume 57, Number 43, March 4, 1992, are incorporated by reference.

(14) [~~(12)~~] 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, December 19, 1986, Volume 51, No. 244, is incorporated by reference.

(a) Corrections to amendments to 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in Federal Register, Volume 52, Number 85, May 4, 1987, are incorporated by reference.

(b) 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, Volume 54, Number 42, March 6, 1989, is incorporated by reference.

(c) The amendment to 29 CFR 1910.120, as published in the Federal Register, Volume 55, Number 72, April 13, 1990, is incorporated by reference.

(d) Amendments, revisions and additions to 29 CFR 1910.120, as published in the Federal Register, Volume 56, Number 75, April 18, 1991, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

MRS. CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: May 13, 1992

FILED WITH LRC: May 15, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 26, 1992, at 1 p.m. at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(8) and (13) affect all employers in the Commonwealth involved in the manufacture of explosives and pyrotechnics, and employers engaged in processes involving highly hazardous chemicals, respectively.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost of compliance with Section 1(8) and (13) will be approximately $17,780,000. The savings will be approximately $14,400,000. These figures represent years 1-5 of implementation of the regulation.

2. Continuing costs or savings: The cost of compliance with Sections 1 and 13 will be approximately $8,120,000 for years 6-11 of compliance with the regulation. The savings will be approximately $7,565,000.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding these amendments.

(b) Reporting and paperwork requirements: These amendments do not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: These amendments will not affect the promulgating administrative body.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these amendments.

(3) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the federal OSHA regulations contain specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of this adoption of amendments.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(8) and (13) amendments require Kentucky employers to comply with standards governing the manufacture of explosives and pyrotechnics and processing highly hazardous chemicals, respectively.

3. Minimum or uniform standards contained in the federal mandate. Section 1(8) and (13) amendments adopt all standards contained the Federal Register, Volume 57, Number 36, February 24, 1992.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These amendments are identical to the changes contained in the federal standards cited in item 3.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional or different responsibilities or requirements than the federal standards.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000- .1500.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus

standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended February 15, 1990 and May 15, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.1000, "Air Contaminants," Table Z-1 is amended as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference.

(a) 29 CFR 1910.1000, "Air Contaminants," Tables Z-1-A, Z-2 and Z-3 as published in Federal Register, Volume 54, Volume Number 12, January 19, 1989 are incorporated by reference.

(b) 4,4'-"Methylene bis (2-chloroaniline)," found in Table Z-1-A of 29 CFR 1910.1000, as published in the Federal Register, Volume 54, Number 12, January 19, 1989, is hereby revoked.

(c) Revisions to 29 CFR 1910.1000, "Air Contaminants," Table Z-1-A, as published in the Federal Register, Volume 54, Number 127, July 5, 1989, is incorporated by reference.

(d) Revisions to 29 CFR 1910.1000, "Air Contaminants," Table Z-1-A, as published in the Federal Register, Volume 54, Number 170, September 5, 1989, is incorporated by reference.

(e) 29 CFR 1910.1000, Table Z-2, "Benzene," shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 176, September 11, 1987 are incorporated by reference.

(f) 29 CFR 1910.1000, Table Z-2, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is amended.

(2) 29 CFR 1910.1001, "Asbestos," is amended as follows:

(a) Amendments as published in the Federal Register, Volume 51, Number 119, June 20, 1986, are incorporated by reference.

(b) 29 CFR 1910.1001(d)(6)(ii) is amended to read: "The employer shall ensure that all sampling will be conducted in accordance with the ORM in Appendix A, before sampling commences."

(c) 29 CFR 1910.1001(d)(6)(iv) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the criterion specified in Appendix A. This notice shall be given prior to the start of the analyses."

(d) 29 CFR 1910.1001(g)(3)(i) is amended to read: "Where respiratory protection is required, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(e) 29 CFR 1910.1001(j)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (j)(1)(i) of the section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(f) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, October 17, 1986, Volume 51, No. 201, is incorporated by reference.

(g) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(h) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(i) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 54, Number 243, December 20, 1989, are incorporated by reference.

(j) Amendments, revisions, and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 55, Number 24, February 5, 1990, are incorporated by reference.

(k) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.

(l) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(3)(a) 29 CFR 1910.1005 "4,4'-methylene bis (2-chloroaniline)" and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), "Laboratory Activities," printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(b) Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows: "Premixed Solutions: Where 4,4'-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(4) 29 CFR 1910.1025, "Occupational Exposure to Lead" shall be amended as follows:

(a) "Table 1 - Implementation Schedule" is amended to read:

TABLE 1 - Implementation Schedule

INDUSTRY[1]	COMPLIANCE DATES 200 ug/m^3	100 ug/m^3	50
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988
Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing	(2)	N/A	June 29, 1982
Lead Pigment Manufacture, Nonferrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of	(2)	N/A	N/A

Copper, and Lead Casting			
All Other Industries	(2)	N/A	June 11,1984

[1]Includes ancillary activities located on the same worksite.
[2] On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

(b) Revision to 1910.1025, as published in the Federal Register, Volume 54, Number 131, July 11, 1989 is incorporated by reference.

(c) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead," as published in Federal Register, Volume 55, Number 30, February 13, 1990, are incorporated by reference.

(d) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead," as published in Federal Register, Volume 56, Number 105, May 31, 1991, are incorporated by reference.

(5) 29 CFR 1910.1028, "Benzene," as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(6) 29 CFR 1910.1029, "Coke Oven Emissions," shall be amended as follows: Revision as published in the Federal Register, Volume 50, Number 178, September 13, 1985 are incorporated by reference.

(7) 29 CFR 1910.1030, "Bloodborne Pathogens," as published in the Federal Register, Volume 56, No. 235, is incorporated by reference with the following revisions, additions, or deletions:

(a) 29 CFR 1910.1030(d)(3)(ix) is amended to read: Gloves. Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

(b) 29 CFR 1910.1030(d)(3)(ix)(D) is removed.

(8) [~~(7)~~] Corrections to 29 CFR 1910.1043, "Cotton Dust" as published in the Federal Register, Volume 51, Number 128, July 3, 1986, are incorporated by reference.

(9) [~~(8)~~] Amendments and corrections to 29 CFR 1910.1047, "Ethylene Oxide and Appendices A, B, C and D," as published in the Federal Register, Volume 51, Number 132, July 10, 1986 are incorporated by reference.

(a) The amendments to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide," as published in the Federal Register, Volume 53, Number 66, April 6, 1988, are incorporated by reference.

(b) Revisions to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide," as published in Federal Register, Volume 53, Number 143, July 26, 1988, are incorporated by reference.

(10) [~~(9)~~] 29 CFR 1910.1048, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference.

(a) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in Federal Register, Volume 53, Number 170, September 1, 1988, are incorporated by reference.

(b) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in the Federal Register, Volume 54, Number 133, July 13, 1989, is incorporated by reference.

(c) 29 CFR 1910.1048(i)(2) is revised to read as follows: If employees' skin may become splashed with solutions containing one 1 percent or greater formaldehyde, for example because of equipment failure or improper work practices, the employer shall provide conveniently located quick drench showers and assure that affected employees use these facilities immediately. The emergency show shall be installed in accordance with 1910.151(d)(3)(c) as adopted by 803 KAR 2:310.

(d) 29 CFR 1910.1048(i)(3) is revised to read as follows: If there is any possibility that an employee's eyes may be splashed with solutions containing one-tenth (0.1) percent or greater formaldehyde, the employer shall provide acceptable eyewash facilities within the immediate work area for emergency use. The emergency eyewash shall be installed in accordance with 1910.151(d)(3)(a) or (b) as adopted by 803 KAR 2:310.

(e) 29 CFR 1910.1048(i)(2) and (3) are effective October 1, 1992.

(11) [~~(10)~~] Amendments, revisions, and additions to 29 CFR 1910.1101, "Asbestos," as published in Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(12) [~~(11)~~] 29 CFR 1910.1200, "Hazard Communication," shall be amended as follows:

(a) Amendments as published in the Federal Register, Volume 52, Number 163, August 24, 1987 are incorporated by reference.

(b) Revision of 29 CFR 1910.1200(i)(3), "Hazard Communication," and an amendment removing the last paragraph in 1910.1200 Appendix D, as published in the Federal Register, Volume 51, Number 189, September 30, 1986, are incorporated by reference.

(13) [~~(12)~~] 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories," as published in Federal Register, Volume 55, Number 21, January 31, 1990, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

MRS. CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: May 13, 1992

FILED WITH LRC: May 15, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 26, 1992, at 1 p.m. at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(5) affects all employers in the Commonwealth with operations involving occupational exposure to "Bloodborne Pathogens." Section 1(6) affects employers with operations concerning "Occupational Exposure to Formaldehyde."

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost of compliance with Section 1(7) will be approximately .5% of gross profits for employers (112,000 workers exposed). The cost of compliance with Section 1(9) will be approximately $500 per facility; it is very difficult to determine number of workers and places of employment at risk, as well as number of facilities due to subject matter.

2. Continuing costs or savings: Section 1(7) will result in an annual cost of approximately 25% of estimate in item 1. Section 1(9) will not result in continuing costs.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding Section 1(7) and (9) which will increase or decrease costs. There will be no effect on competitors.

(b) Reporting and paperwork requirements: Section 1(7) and (9) will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: These regulations will not affect the promulgating administrative body.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these regulations.

(3) Assessment of anticipated effect on state and local revenues: These regulations have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the federal regulations contain specific methods for compliance. The Commonwealth, different from federal OSHA, has elected to prohibit the exemption for phlebotomists not to wear gloves at blood donation centers (Section 1(7)). In Section 1(9), the Commonwealth has elected to require emergency eyewash and showers under certain conditions, which gives better understanding of federal OSHA requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of this adoption of amendments.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(7) regulation requires Kentucky employers to comply with federal standards governing occupation exposure to "Bloodborne Pathogens." Section 1(9) regulation governing "Occupational Exposure to Formaldehyde."

3. Minimum or uniform standards contained in the federal mandate. Section 1(7) regulation adopts all standards contained in the Federal Register, Volume 56, Number 235, December 6, 1991, except for amendments contained in 803 KAR 2:320, Section 1(7)(a) and (b). Section 1(9) regulation adopts all standards previously adopted from federal OSHA, except for amendments contained in 803 KAR 2:320, Section 1(9)(a), (b) and (c).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 1(7) prohibits exemption for phlebotomists to not wear gloves at blood donation centers. Section 1(9) defines exactly what personal protection (emergency eyewash and showers) is required when exposed to formaldehyde.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments better address safety and health hazards; it will be easier for employers to understand requirements and enforcement will be easier.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Section 1(7) and (9) affect all local government entities that are with the scope of "Bloodborne Pathogens" and "Occupational Exposure to Formaldehyde," respectively.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect local government employees' occupational safety and health.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The purpose of these regulations is to comply with federal OSHA standards relating to occupational exposure to bloodborne pathogens, as well a formaldehyde. These regulations will have no effect on the number of employees of local government.

LABOR CABINET
Office of Labor-Management Relations
(Proposed Amendment)

803 KAR 6:010. Kentucky labor-management matching grant program.

RELATES TO: KRS Chapter 336, HB 331 of the 1990 General Assembly

STATUTORY AUTHORITY: KRS 13A.200, HB 331 of the 1990 General Assembly

NECESSITY AND FUNCTION: [~~A newly created section of~~] KRS [~~Chapter~~] 336.165 requires the Office of Labor-Management Relations to provide grants-in-aid to labor-management organizations that include both labor and management representatives, for the purpose of improving labor-management relations or improving communications with respect to subjects of mutual interest or concern to labor and management. This amendment to the existing regulation is promulgated [~~pursuant~~] to clarify the grant procedure. [~~KRS 13A.200 and shall not take effect prior to the effective date of Acts of the 1990 General Assembly.~~] The function of this regulation is to define what types of labor-management organizations are eligible for funding, define local match requirements associated with a grant-in-aid, explain the application cycle, application requirements and reporting requirements, selection criteria for projects that will be funded, and terms and conditions governing the grant process.

Section 1. Definitions. (1) "Director" means the Executive Director of the Office of Labor-Management Relations.

(2) "Grant" means a grant-in-aid dispensed through the Office of Labor-Management Relations for the purpose of improving labor-management relations or communications with respect to subjects of mutual interest or concern to labor and management.

(3) "Office" means the Labor Cabinet's Office of Labor-Management Relations.

Section 2. Eligibility. (1) Any existing or newly created labor-management committee is eligible to apply for project funding provided it encompasses any one of the following: a specific geographic area within Kentucky, such as a municipality, several contiguous counties, a plant, an industry or a segment of the public sector, such as police

officers, firefighters or teachers. Institutions of higher learning are also eligible for funding under the program provided they are involved in educational or research projects relating to the improvement of labor-management relations.

(2) To be funded, the organization must meet the following criteria: it must have a specific project proposal that can be completed in a one (1) year period; be organized jointly by employers and employee organizations in that area, plant, industry or segment of [~~or~~] the public sector; be established for the purpose of improving labor-management relations, job security, organizational effectiveness, enhancing economic development, or involving workers in decisions affecting their jobs, and improving communications with respect to subjects of mutual interest or concern to employers and their employees. The project must include persons representing the labor-management community within the area, plant, industry or segment of the public sector that it serves.

(3) For institutions of higher learning, the college or university must be involved in providing educational services concerning subjects relative to the improvement of labor-management relations or be involved in research projects that relate to the improvement of labor-management relationships.

Section 3. Application Process. (1) The office shall annually publish a grant application package that shall explain eligibility requirements, [~~include the total dollar amount available for the grant program for the fiscal year, eligible applicants,~~] selection criteria, match requirements, reporting requirements and any other information applicable to the grant program.

(2) The office shall prepare and make available all forms for documentation necessary to administer the program. Any organization or institution seeking project funding under the program shall submit an application package to the office. [~~The director may consider applications received after set deadlines.~~]

Section 4. Selection Criteria. (1) Selection criteria that will be used by the office in making grant awards will include:

(a) The extent to which the application has clearly identified the issues or problems that the proposed project will address;

(b) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the expected project results;

(c) The appropriateness of organization membership and the degree of commitment of those individuals to the goals and objectives of the proposed project;

(d) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates;

(e) The cost effectiveness and fiscal soundness of the applicant's budget request and long-term budget, as well as identification of the amounts and sources of the local match; and

(f) The overall feasibility of the proposed project in light of all of the information presented for consideration and the overall quality of the application.

(g) For organizations that have received at least one (1) previous grant, the extent to which the grantee has complied with the requirements of this regulation.

(2) No funds shall be awarded under the following circumstances:

(a) In-plant labor-management projects unless the employees in that plant are represented by a labor organization and there is in effect at that plant a collective bargaining agreement.

(b) An area, industry-wide or public sector labor-management project unless participants in the sponsoring organization include any labor organization certified or recognized as the representative of employees of an employer participating in such organization. However, employers whose employees are not represented by a labor organization may participate in area, industry-wide or public sector organizations.

(c) To any organization which interferes with the collective bargaining activities in any plant, industry or segment of the public sector.

(d) For recreational projects, such as labor-management golf, fishing or tennis outings.

Section 5. Grant Amounts. (1) Project grants to eligible labor-management organizations shall be limited to a maximum amount of $15,000 per project for area and industry specific labor-management organizations and to a maximum of $10,000 per project for in-plant, public sector and institution of higher learning-based labor-management organizations.

(2) The office may reduce the requested amount of grant funds based on the appropriateness of the proposed project to goals and objectives of the grant program and to other such selection criteria as stated in Section 4(1)(a) through (g) [~~(f)~~] of this regulation.

Section 6. Length of Grants. (1) All grant awards shall be limited to a period of twelve (12) months. The grant program year will run July 1 through June 30.

(2) Funding of one (1) project does not guarantee funding of others. Applications for project funding shall be considered on a project-by-project basis annually. Project goals and objectives shall be capable of being completed within a one (1) year period.

(3) As it is the intent that organizations seeking funding become self-sufficient over a five (5) year period, organizations will be limited to a maximum of five (5) project grants.

Section 7. Matching Requirement. (1) Matching grants under the program shall not exceed ninety (90) percent of the total operating cost of the funded project.

(2) Matching funds may come from private sources or from local and federal government sources. Proceeds from project grants or other funds obtained from other agencies of state government may not be used to meet match requirements.

(3) Local matching funds must include at least fifty (50) percent cash and no more than fifty (50) percent "in-kind" services, such as donated office space, clerical support, equipment, postage, etc., which directly accomplishes the objectives of the project. In considering projects for funding, the office shall give preference to full cash match as opposed to cash plus in-kind services.

(4) Grant applications must be accompanied by letters of commitment from official representatives of public or private sources of matching funds.

(5) As a goal of a labor-management committee is to become self-supporting, project income shall be an allowable source of matching funds after the organization has completed one (1) successful project.

Section 8. Reporting Requirements. (1) The Office of Labor-Management Relations shall monitor and evaluate the activities of an organization receiving grant funding.

(2) A participating organization shall submit monthly [~~quarterly~~] to the office a programmatic report outlining the goals and objectives which have been achieved during the previous month [~~quarter~~]. This report must specify if the major milestones identified by the applicant in its application package are being met in accordance with the timetable provided; if not, an explanation of why these milestones have not been met shall be provided. This report shall be on forms prepared by the office. An applicant shall also submit to the office monthly [~~and quarterly~~] expenditure reports summarizing and describing line-item costs charged to the grant and line-item matching share supplied by the applicant where applicable. These expenditure summaries shall be on forms prepared by the office. The monthly report shall be submitted to the office no later than the tenth of the month following the end of the monthly reporting period.

(3) To enable the office to better monitor and evaluate funded projects, it may schedule meetings of representatives of organizations

receiving project funding. Attendance by grantees at any such scheduled meeting shall be mandatory.

Section 9. Application Requirements. (1) The application for project funding by area, in-plant, industry-wide and public sector labor-management organizations shall include the following information:

(a) Eligibility certification.

1. A description of the structure of the organization (e.g., not for profit, incorporated, etc.) including any articles of incorporation, not for profit certification or current bylaws.

2. The specific geographic area or specific industry served by the organization.

3. A list of the board members and their affiliation including current letters of commitment from all board members and cochairpersons.

4. The name, title, and job description of all full-time and part-time organization staff.

5. A brief organization history including its formation date, major focus and activities and past funding history, if applicable.

6. The name and a summary of the nature of the organization's affiliation with other local, state or federal agencies or organizations.

(b) Goals and objectives. Using specific goals and objectives, a description of what the labor-management project shall accomplish within the grant period. Goals and objectives shall be expressed in measurable terms. In addition, a description of the criteria used by the organization to evaluate its success in meeting specific goals and objectives.

(c) Implementation timetable. An outline of the applicant's proposed activities during the grant period with major milestones or activities and target dates for accomplishing goals and objectives.

(d) Budget. A detailed budget and narrative for the project for the grant period, including a summary of the source of the local match; documentation specifying the dollar amount or the commitment from sources of the local match; if in-kind contributions are being included as part of the local match, documentation as to what constitutes the in-kind contribution and its estimated dollar value.

(2) An application for project funding by institution of higher learning-based labor-management organizations shall include the following information:

(a) Eligibility certification.

1. A description of the primary nature of the institution's business (e.g., university, college or community college, etc.).

2. A description of the intended beneficiaries of the educational or research and development project to be undertaken (e.g., companies, unions, labor-management committees, industries, etc.).

3. The names and a summary of the previous experience of the individuals who will be involved in the project and references, copies of previous research projects and a description of past labor-management experience.

(b) Scope of work.

1. A description of the project to be undertaken with the grant funds, including a list of the objectives of the project.

2. A description of the target audience who will benefit from such project and a summary of anticipated results of the project.

3. An explanation of the methodology to be used in the project (e.g., data collection, surveys, personal interviews, symposia, etc.).

(c) Implementation timetable. An outline of the proposed activities of the project over the grant period with major milestones or activities and target dates for accomplishing the project's objectives.

(d) Budget. A budget narrative for the grant period shall be submitted, including a summary of the source of any funds to be used to supplement the state grant. The total project cost, as well as the amount and source of other funds to be devoted to the project.

Section 10. Application Evaluation. (1) Applications shall be reviewed and evaluated for completeness by the office staff under the supervision [~~direction~~] of the director. The review and evaluation process shall be completed within forty-five (45) days after receipt of the application package by the office.

(2) Upon receipt of a completed application for a matching grant, the director shall provide a copy of the application to the Secretary of Labor for review and comment prior to awarding any grant. The director shall consider the recommendations and comments of the Secretary of Labor in awarding grant funds.

Section 11. Audit Policy. (1) An independent audit of grant fund expenditures by organizations shall be performed. Organizations are responsible for arranging for the audit of project expenditures within thirty (30) days of completion of the project. The audit shall include an examination of the organization's project records to determine that financial standards are maintained in accordance with generally accepted accounting principles and that project funds were expended in accordance with the terms of the grant. Costs for conducting the audit shall be a legitimate budget item. The organization shall submit three (3) copies of the completed report to the office.

(2) Grant funds not expended by the organization at the end of the grant period shall be returned to the Kentucky Labor-Management Matching Grant Program.

Section 12. Project File. (1) The office shall establish and maintain an official project file and assign a grant number for each grant project.

(2) The project file shall contain the notice of grant award which shall be signed by the Secretary of Labor [~~director~~] and an authorized representative of the participating organization. The notice of grant award shall cite the statutory authorization for the grant, the total dollar amount of the grant, all special terms and conditions of the grant, and an authorization for the grantee to incur costs against the grant during the grant period. The grantee's authorized signature shall constitute acknowledgment of the grantee's acceptance of the grant award and all terms and conditions governing the grant.

Section 13. Terms and Conditions Governing the Grant. (1) Fiscal recording/reporting requirements. The grantee's financial management system shall be structured to provide for accurate, current, and complete disclosure of the financial results of the grant program. The grantee is accountable for all grant funds received. Grant funds received by the grantee shall be deposited timely and intact into a separate bank account established solely for the use of the grant funds. The grantee shall maintain effective control and accountability over all funds, equipment, property, and other assets under the grant as required by the office. The grantee shall keep records which detail the expenditures of grant funds and accurately document such expenditures sufficient to permit the tracking of grant funds.

(2) Audit requirement. A final financial and compliance audit shall be performed by the grantee. This audit shall include both the state and required matching share of the project. The grantee shall be responsible for correcting any deficiencies disclosed by such audit, including such action as the office, based on its review of the audit report, may direct. The audit of all appropriate project records shall be performed by an independent public accountant certified and licensed by the state of Kentucky.

(3) Matching contributions. As required in Section 7 of this regulation, the grantee's matching contribution shall meet all of the following criteria:

(a) Be under the control of the key project officer;

(b) Be necessary and reasonable for proper and sufficient administration of the program;

(c) Be critical to the success of the project if it is a personal service match;

(d) Be supported by individual monthly time records of services rendered and detailed documentation of all other applicable, direct and indirect costs of the program;

(e) Not be a general expense of the grantee which is incurred in carrying out overall responsibilities other than those required under the grant.

(4) Modification and amendment of the grant. A grant is subject to revision only as follows:

(a) Modifications by operation of law. Any modification required by changes in state law or regulations shall be incorporated into the grant as fully as set forth in the terms and conditions. The office shall notify grantees of any amendment to regulations.

(b) Modifications in budget. Grantee may make a line-item transfer only with prior written approval by the director. The grantee shall not make any change in line items which increases the total grant budget.

(c) Suspension. If the grantee fails to comply with the special conditions or the general terms and conditions of the grant award, the office may, after notice to the grantee, suspend the grant and withhold further payments or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee. The office may determine to allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspension, provided the costs were necessary and reasonable for the conduct of the project.

(d) Termination. A grant may be terminated as follows:

1. Termination due to loss of funding. The office may terminate, in full or part, any grant in the event the office suffers a loss of state appropriations. If loss of state appropriations occurs, the office shall give the grantee written notice of the effective date of full or partial termination, or if a change in funding is required, notice of the change and the changes in the approved budget.

2. Termination for cause. If the office determines that the grantee has failed to comply with the general terms and conditions of the grant, the office may terminate the grant, in whole or part, at any time before the date of completion. The office shall promptly notify the grantee in writing of the determination to terminate, the reasons for such termination, and the effective date the termination shall occur.

3. Termination for convenience. The office or the grantee may terminate the grant, in whole or part, when the office and the grantee agree that continuation of the project objectives would not produce beneficial results commensurate with further expenditures of funds. The office and the grantee shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion of the grant to be terminated. The grantee shall not incur further obligations for the terminated portion after the effective date and shall cancel all outstanding obligations possible. The office shall allow full credit to the grantee for the office's share of the noncancellable obligations properly incurred by the grantee prior to termination.

(e) Access and inspections. The grantee shall at any time permit the office or the State Auditor's office or any of their duly authorized representatives to have full access to and the right to examine any pertinent books, documents, papers and records of the grantee involving transactions related to a grant for three (3) years from the date of submission of the final expenditure report or until all audit findings have been resolved, whichever is later.

(f) Access and inspection of subcontractors. The grantee shall include in any grant proposal a provision that the office or the State Auditor's office or any of their duly authorized representatives shall have full access to and the right to examine any pertinent books, documents, papers, and records of any subcontractor involving transactions related to a grant for three (3) years from the final payment under the contract.

(g) Monitoring and evaluation. All grants shall be monitored periodically by the office throughout the program year for compliance with these regulations. Evaluations shall be made both during the operation of the program and upon its completion. Program evaluation shall be based on the ability of the grantee to meet specific goals and objectives outlined in the application and for the effective and efficient utilization of grant funds.

(h) Liabilities. The grantee shall agree to be solely liable for all claims, demands, and actions based upon or arising out of any services performed by themselves or by their associates and employers under a grant.

(i) Publication, reproduction, and use of material. The office shall have authority to publish, distribute and otherwise use any reports, data, or other materials prepared through funds. Any publication produced as a result of grant funds shall include on its title page the following citation: "This project was conducted with funds provided under the Kentucky Labor-Management Matching Grant Program by the Kentucky Labor Cabinet's Office of Labor-Management Relations ~~[and does not necessarily represent the viewpoint of the Kentucky Labor Cabinet]~~."

(j) Interest on grant funds. All interest earned on grant funds held by the grantee shall become part of the grant principle when earned; interest earned on grant funds may be retained by the grantee when the office determines that the cost of accounting for the interest or allocating the interest to the grant principle is significant in comparison with the interest earned. Any interest earned under the grant, and not expended as grant principle during the term of the grant, shall be returned to the office.

(k) Grantees shall agree that no grant funds shall be used for any partisan or nonpartisan political activity or to further the election or defeat of any candidate for public office, nor shall they be used in any way to provide voters or prospective ~~[perspective]~~ voters with transportation to the polls or similar assistance in connection with any election or voter registration activity.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: April 27, 1992

FILED WITH LRC: April 28, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 22, 1992, at 9 a.m. at Bay 3 Conference Room, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1992, five days prior to the meeting, 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: Gary Moberly, Executive Director, Office of Labor-Management Relations, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gary Moberly

(1) Type and number of entities affected: Entities voluntarily requesting grant-in-aids pursuant to KRS 336.165, which provides for matching funds to any organization that includes both labor and management representatives seeking to institute a program that would improve communications with respect to their constituents.

(a) Direct and indirect costs or savings to those affected: Matching funds will directly reduce the cost for successful applicants in regard to expenses of projects submitted for approval to the Office of Labor-Management Relations.

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Not applicable.

(b) Reporting and paperwork requirements: Those already required by regulation.

(2) Effects on the promulgating administrative body: Not applicable.

(a) Direct and indirect costs or savings: Not applicable.

1. First year: Not applicable.

2. Continuing costs or savings: Indirect savings due to an enhancement of labor-management atmosphere.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: Those already required by regulation.

(3) Assessment of anticipated effect on state and local revenues: Not applicable.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable.

(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:

TIERING: Was tiering applied? No. Participation in the Labor-Management Grant Aid Program is purely voluntarily, and the regulation relates only to the limited entities that are awarded grants pursuant to KRS 336.165.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(Proposed Amendment)

804 KAR 9:040. Retail package liquor license quota.

RELATES TO: KRS 241.060, 241.065, 241.075, 243.030

STATUTORY AUTHORITY: KRS 241.060

NECESSITY AND FUNCTION: The express provisions of KRS 241.060(2) enable the Alcoholic Beverage Control Board to limit the number of licenses to be issued in any political subdivision of the state and permit the board to make reasonable division and subdivisions of the state or any political subdivision into districts for this purpose. 804 KAR 9:010 establishes a general retail liquor license quota based upon county population for any area within that county in which prohibition has been repealed. Instances may arise, however, in which the quota based on county population permits the issuance of retail liquor licenses in a number totally disproportionate to the population of the area in said county in which prohibition has been repealed. It is, therefore, necessary for the board to establish individual quotas when such a situation as above described arises.

Section 1. The Alcoholic Beverage Control Board may, for good reason shown, adopt by regulation, retail liquor license quotas for political subdivisions less than a county where the county quota established by 804 KAR 9:010 would be excessively disproportionate to that based upon the population of the smaller political subdivisions. In such instances, the quota set in Sections 1 and 2 of 804 KAR 9:010 shall be inapplicable. The quota exceptions contained in Section 2 of 804 KAR 9:010 shall remain in effect and be incorporated herein.

Section 2. Pursuant to the authority herein, the City of Pikeville, having voted to repeal prohibition on April 12, 1983, the actual resident population of the City of Pikeville being 4,756, and the resident population of Pike County being 81,123 according to the 1980 census, it is determined that the retail package liquor license quota established according to 804 KAR 9:010 would create a permissible number of retail package liquor licenses excessively disproportionate to the population of the City of Pikeville, the retail package liquor license quota for the City of Pikeville, Kentucky, is therefore set at thirteen (13).

Section 3. Pursuant to the authority herein, the city of Madisonville, having voted to repeal prohibition on March 10, 1992, the actual resident population of the city of Madisonville being 16,200, and the resident population of Hopkins County being 45,964 according to the 1992 population projections of the Urban Studies Center of the University of Louisville, it is determined that the retail package liquor license quota established according to 804 KAR 9:010 would create a permissible number of retail package liquor licenses excessively disproportionate to the population of the city of Madisonville, the retail package liquor license quota for the city of Madisonville, Kentucky, is therefore set at seven (7).

DON W. STEPHENS, Commissioner
ED HOLMES, Secretary

APPROVED BY AGENCY: April 23, 1992

FILED WITH LRC: April 24, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on the above proposed regulation amendment will be held on Tuesday, June 23, 1992, at 2 p.m., EDT, in the Hearing Room of the Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky. Unless requests for a public hearing are received, in writing, five (5) working days before the hearing date, the public hearing will be cancelled. Those who may be interested in attending, please contact: Toni Sanderson, Secretary to the Board, Alcoholic Beverage Control Board, 123 Walnut, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Catherine C. Staib

(1) Type and number of entities affected: Seven

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Not determinable.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative.

(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: No

TIERING: Was tiering applied? Yes, only applies to package licenses in Madisonville.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and 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 identifies and publishes the manufacturer's standard specification number of the material accepted in the installation and design of soil, waste and vent systems in all types of plumbing systems. This amendment (Section 26) allows an alternative for venting floor drains and open receptacles in commercial kitchens if the waste line discharges into a four (4") inch master trap before entering the sanitary sewer system. This amendment was approved by the Plumbing Code Committee on November 6, 1991 and the Board of Housing on January 23, 1992. [~~relates to material and the design of the soil, waste and vent systems that shall 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.~~]

Section 1. Grades and Supports of Horizontal Piping. Horizontal piping shall 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 exceed ten (10) feet in length. 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 floor level.

Section 2. Change in Direction. Changes in direction shall be made by the appropriate use of forty-five (45) degree wyes, half-wyes (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) 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. Double hub bends and 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 shall be [~~is~~] prohibited. Double sanitary tees may be used on vertical soil, waste and vent lines. Pipes shall be installed without hubs or restrictions that reduce the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, dead ends shall be avoided.

Section 5. Protection of Material. Pipes passing under or through walls shall be protected from breakage. Pipes passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. 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 produced and labeled as [~~conforming to~~] ASTM B-586-73, Types R-K, R-L, R-DWV brass tubing, DWV brass tubing produced and labeled as [~~conforming to~~] ASTM B-587-73, seamless stainless steel tubing, Grade G or H produced and labeled as [~~conforming to~~] CS-268-68, polyvinyl chloride schedule 40 or 80 produced and labeled as [~~conforming to~~] ASTM D-2665-76, D-1784-75 and F-891, acrylonitrile- butadiene-styrene schedule 40 or 80 produced and labeled as [~~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 identified in this section [~~listed above~~].

Section 7. Size of Soil and Waste Pipe per Fixture Unit on 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

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. 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 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 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 installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with all other sections of this regulation.

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 a three (3) inch house drain enters a building, it shall be attached to 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. Soil and waste stacks and branches shall have 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 either cast iron, lead, brass, copper, or plastic closet bends. 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 sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13. Prohibited Connections. 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. Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be 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, properly bound with copper wire, or 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. Roof extensions of soil and waste stacks shall run full size at least one (1) foot above the roof. If the roof is used for purposes other than weather protection, the extensions shall not be less than five (5) feet above the roof. 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 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 stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside 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 existing vent stack on the lower building.

Section 18. Traps, Protected; Vents. Fixture traps shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. Crown vents shall 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. 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	10 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 it becomes necessary to increase a vertical vent stack, it 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. 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. 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 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) 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.

Section 26. Floor Drain Individual Vent not Required. Manufacturers' floor drains shall not require individual vents when 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. Open receptacles may be connected to floor drain lines without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

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 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 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. 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 waste piping shall be equipped with sufficient cleanouts 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. 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. All 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 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. 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 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 produced and labeled as [~~conforming to~~] ASTM D-1204-62T, polypropylene pipe produced and labeled as [~~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 produced and labeled as [~~conforming to~~] ASTM D-1204-62T, polypropylene pipe produced and labeled as [~~conforming to~~] ASTM D-4101-85, or filament-wound reinforced thermosetting resin pipe produced and labeled as [~~conforming to~~] ASTM D-2996 (green or poly thread).

Section 37. Special Vents. Flat or wet vents serving a plumbing fixture shall 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: May 5, 1992
FILED WITH LRC: May 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 23, 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 June 18, 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.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, MAY 15, 1992

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:100 Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (15), 164.753 (2), 20 USC 1095-1

STATUTORY AUTHORITY: KRS 164.748(4), (15), 164.753(2), 20 USC 1095-1

NECESSITY AND FUNCTION: Pursuant to KRS 164.744(1) and 164.748(2) the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with Title IV, Part B of the federal act. KRS 164.748(10) empowers the authority to collect from borrower's loans on which the authority has met its guarantee obligation. Section 605 of PL 102-164 permits a student loan guarantee agency to garnish the wages of a borrower to recover on a loan guaranteed pursuant to Title IV, Part B of the federal act, notwithstanding any provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. This regulation is necessary to establish the procedures for implementing such wage garnishment in accordance with requirements of the federal act.

Section 1. Definitions. (1) The definition of "authority" is governed by KRS 164.740.

(2) "Borrower" shall mean the recipient of an insured student loan, repayment of which has been guaranteed by the authority to the lender.

(3) "Default" shall mean the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note or applicable regulations under circumstances where the lender or the authority finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for at least 180 days, for a loan repayable in monthly installments, or 240 days, for a loan repayable in less frequent installments.

(4) The definition of "disposable earnings" is governed by Section 488A(d) of the federal act.

(5) The definition of "federal act" is governed by KRS 164.740(9).

(6) The definition of "insured student loan" is governed by KRS 164.740.

(7) The definition of "participating lender" is governed by KRS 164.740(16).

Section 2. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the borrower's earnings which conforms to the requirements of this section.

(2) No order for withholding of disposable earnings shall be issued under this section nor become effective less than thirty (30) days after the authority provides to the borrower by personal service or certified mail, return receipt requested, a written notice. The notice shall include at least the following information:

(a) The name and address of the borrower;

(b) The amount of the debt determined by the authority to be due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue and order for withholding of disposable earnings and that the borrower's earnings and property are subject to both administrative and judicial enforcement;

(e) A statement of the borrower's rights to dispute the existence or amount of the debt or the terms of any prior repayment schedule other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection;

(f) A statement of the borrower's rights to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority for the borrower's failure to timely request a hearing, the borrower's acquiescence to the withholding of disposable earnings will be presumed; and

(i) A statement that if the borrower requests a hearing but, fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable earnings.

(3) Notwithstanding Section 1(1) of this regulation, no amount shall be withheld from the disposable earnings of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

Section 3. (1) A hearing shall be provided if the borrower, on or before the 15th day following the date of mailing (as evidenced by the date of the notice) of the notice described in Section 2 of this regulation, files with the authority a written request for such hearing in accordance with procedures prescribed by this regulation. The timely filing of a request for a hearing (evidenced by the postmark date) shall automatically stay further collection activity under this regulation pending the outcome of the hearing. If the borrower requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing. A hearing officer, appointed by the authority (who shall not be a regular employee of the authority), shall conduct dispute hearings in Franklin County or, upon motion to the hearing officer and determination of undue burden upon the borrower, the county of residence or place of employment of the borrower, or any other location agreed by the parties. The hearing shall be mechanically, electronically or stenographically recorded.

(2) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be delivered to the borrower and the authority no more than sixty (60) days after receipt of the request for the hearing. The decision shall establish the borrower's liability, if any, for repayment of the debt.

(3) Following the issuance of the hearing officer's decision, the borrower or the authority may file an appeal in Franklin Circuit Court, in accordance with the Kentucky Rules of Civil Procedure, which shall decide the dispute upon the hearing record. Where the borrower's liability is established by the hearing officer's decision, absent a showing of indigency by the borrower, an administrative order for withholding of disposable earnings may be issued forthwith by the authority, which shall, if the borrower's appeal is successful, return to the borrower any money received pursuant to the withholding order.

(4) The remedies provided in this section shall not preclude the use of other judicial or administrative remedies available to the authority under the laws of the Commonwealth and nothing contained in this section shall be construed to stay the use of other remedies.

Section 4. Hearing Procedure. (1) The borrower shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and to make both opening and closing statements.

(2) Not less than ten (10) days prior to the scheduled hearing, the parties shall exchange a list of the names, addresses, and phone numbers of any witnesses expected to testify at the hearing and copies of any documents expected to be introduced into evidence. Not less than ten (10) days prior to the scheduled hearing, the borrower shall submit to the counsel for the authority, a written statement of response specifically stating the basis of dispute and a legible copy of any documentation that the borrower intends to offer as evidence at the hearing, and facts recited in notice pursuant to Section 2(2) of this regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to their attention as soon as practicable. Noncompliance with this requirement shall be sufficient grounds for entry of an appropriate order by the hearing officer, including, but not limited to, postponement, dismissal of the appeal, quashing the withholding order, or vacating the stay.

(3) Order of proceeding. The hearing officer shall convene the hearing, identify the parties to the action and the persons present, admit into evidence the notice described in Section 2(2) of this regulation and the borrower's response described in subsection (2) of this section, solicit from the parties and dispose of any objections or motions, accept into evidence any documentary evidence not objected to, solicit opening statements, and proceed with the taking of proof. The taking of proof shall commence first by the borrower and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth. However, statutes or judicial rules otherwise pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section, and the hearing officer may receive any evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision. Copies of documents shall be admissible, and shall require only the minimal authentication necessary to establish a reasonable presumption of their genuineness and accuracy or may be admitted without objection. The hearing officer may exclude any evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious. At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

Section 5. (1) An administrative order issued by the authority to withhold disposable earnings shall be served by the borrower's employer personally or by certified mail, return receipt requested. A copy of the order shall be provided to the borrower. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the borrower's disposable earnings, except that a greater percentage may be deducted upon the written consent of the borrower.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the authority therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued thereon at the prescribed rate in the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days. The employer shall be liable to the authority for any lawfully due amount which the employer fails to withhold from earnings due the borrower following receipt of the order.

(5) No withholding under this section shall be grounds for discharge from employment, refusal to employ or disciplinary action against any employee subject to withholding under this section.

(6) The employer may deduct the sum of five (5) dollars for each payment made pursuant to the order as reimbursement of processing cost.

(7) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this regulation requires delivery of a notice or other communication by personal service, said service may be made by any officer authorized under KRS 454.140 to serve process or by any person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the borrower shall be rebuttably presumed if the person to be served or any other adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) In the case of an administrative order to withhold disposable earnings served upon an employer, receipt shall be rebuttably presumed if the person to whom the order is directed signs or refuses to sign a receipt or if his employee or agent with apparent authority signs or refuses to sign a receipt.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: The exact number of student loan borrowers that will ultimately be affected by this regulation cannot be determined because it depends on unforeseen factors of how many borrowers will default and of those who default how many will be employed and not voluntarily repay their loans. By example as of April 30, 1992, there were 20,950 borrowers with outstanding loans in default totalling $67 million. 1618 loans (totalling $5,142,768) had defaulted since January 1, 1992. Of those 1618 defaulters 410 had known employment and could, absent voluntary payments, be subjected to this process.

(a) Direct and indirect costs or savings to those affected:

1. First year: The potential cost would be the withholding of 10% of the disposable earnings of those who default on their student loans and become subject to this regulation. An estimate can be derived from the fact that KHEAA has actively used litigation as a collection tool for a number of years. KHEAA is currently enforcing judgments against 588 defaulters through judicial garnishment. That process (attaching 25% of disposable earnings) is yielding $56,000 per month.

2. Continuing costs or savings: See #1 above

3. Additional factors increasing or decreasing costs (note any effects upon competition): The regulation requires an employer (as in the case of a judicial garnishment or wage assignment for child support) to engage in the administrative effort to withhold wages and submit them to KHEAA (as creditor) with a statement reflecting gross and disposable earnings. The employer is permitted to retain $5 per pay period as compensation for any additional expense involved.

(b) Reporting and paperwork requirements: The regulation requires a borrower in default on a student loan who is subjected to this process to request a hearing in writing and subsequently submit a statement of his/her dispute and supporting documentation. If a wage withholding order is issued, the regulation requires the employer (as is the case with a judicial garnishment) to report the gross and disposable earnings of the debtor when submitting to KHEAA the amount withheld pursuant to the order.

(2) Effects on the promulgating administrative body: The overall effect of using the process established by this regulation would be to speed the recovery of defaulted loans prior to resorting to litigation through judicial process, thereby avoiding additional pressure on a heavily burdened court system. Additionally, the process potentially will enhance the in-house collection of loans where the borrower resides out-of-state and reduce the need for contracted services.

(a) Direct and indirect costs or savings:

1. First year: The savings cannot be precisely determined because the volume depends on the number of loans likely to default and variables such as the extent to which defaulted loans are fully recovered through this process without resort to litigation by avoiding the cost of sheriff fees for service of summons. Savings may be somewhat offset by an undetermined amount necessary to conduct

administrative hearings. In any event, costs are recoverable from the defaulter under the terms of the promissory notes.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: There are several factors that contribute to a decrease in costs for the agency. First, a faster recovery of loans through this process will permit earlier retention of the agency's 30% share of collections and consequent reinvestment of funds, and quicker retention will avoid extended operating expenses associated with continued collection activity and rigid federal requirements. Second, the process will enhance in-house recovery of defaults from borrowers and reduce the need for contracted collection and litigation services.

(b) Reporting and paperwork requirements: This regulation requires the agency to send a specific notice delineating the debtor's rights and to provide an administrative hearing in the event the debtor disputes the obligation.

(3) Assessment of anticipated effect on state and local revenues: The process established by this regulation will permit expedited recovery of defaulted loans and retention by the agency of 30% of collections. This amount represents federally restricted funds used to pay operating expenses of the loan insurance program.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The agency uses a full range of collection tools to recover defaulted loans, including telephone collection, tax refund setoff, litigation, and referral of accounts to contracted collection agencies. The process established by this regulation is another tool authorized by federal law, and its use is consistent with the agency's policy of using every means available to recover defaulted loans.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. The regulation affords equal, uniform notice and due process safeguards of administrative hearings. No disparate treatment is warranted or permissible under the authorizing federal statute.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. Section 488A of the Higher Education Act of 1965 (20 USC 1095-1) as added by §605 of PL 102-164 (Nov. 15, 1991).

2. State in sufficient detail the state compliance standards: This regulation provides for issuance of a notice by the agency, to a defaulting debtor, delineating the rights of the debtor (including the right to inspect records, make voluntary payments, or request a hearing to dispute the debt. The regulation sets forth the time frame and procedure for conducting an evidentiary hearing, if one is requested. Finally, the regulation prescribes the process for issuance of an administrative order for withholding of 10% of a debtor's disposable earnings.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute requires a minimum of 30 days prior notice to a defaulting debtor, and requires the agency to afford the opportunity to inspect records, make voluntary payments, and request a hearing to dispute the debt. The federal statute limits the individuals and amount of wages that may be subjected to withholding under this process, and precludes a full-time employee of the agency from conducting the evidentiary hearing.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. This regulation does not impose stricter, additional or different requirements than the federal mandate.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:001. Definitions pertaining to Chapter 5 of Title 11 of the Kentucky Administrative Regulations.

RELATES TO: KRS 164.740 to 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4), HB 468 (1992 RS), Part I, F. 43, p. 47

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide student financial assistance to students for attendance at Kentucky postsecondary educational institutions. This regulation sets forth definitions of terms common to multiple regulations in this chapter. By defining the terms "Kentucky tuition grant" and "KHEAA grant", the substance of 11 KAR 5:010 is included in this regulation. Therefore, this regulation repeals 11 KAR 5:010.

Section 1. Definitions. For purposes of Chapter 5 of Title 11 of the Kentucky Administrative Regulations, the terms listed below shall have the following meanings:

(1) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(2) The definition of "authority" is governed by KRS 164.740(1).

(3) The definition of "business school" is governed by KRS 164.740(3).

(4) "College access program" or "CAP" means the program of student financial assistance grants authorized under HB 468 (1992 RS), Part I, F. 43, p. 47 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) The definition of "college" is governed by KRS 164.740(4).

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution; and

(c) For purposes of the college access program a business school, college, school of nursing or vocational school, and meets the requirements of the federal act; or

(d) For purposes of the Kentucky tuition grant program, a private, nonprofit college whose institutional programs are not comprised solely of sectarian instruction.

(8) The term "eligible noncitizen" means an individual who is either:

(a) A U.S. national;

(b) A U.S. permanent resident with an Alien Registration Receipt Card (1-151 or 1-551);

(c) A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

1. "Refugee";
2. "Asylum granted";
3. "Indefinite parole" and/or "humanitarian parole";
4. "Cuban-Haitian entrant".

Students who are in the U.S. on an F1 or F2 student visa only or a J1 or J2 exchange visitor visa only or a G series visa only are not eligible for KHEAA grant assistance.

(9) "Eligible program of study" means an undergraduate program offered by an educational institution which:

(a) Is of at least two (2) academic years duration; and

(b) Leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.

(10) The term "expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying congressional

methodology set forth in Title IV, Part F of the federal act to the information that the student and his family provided on the application.

(11) The definition of "federal act" is governed by KRS 164.740 (9).

(12) "Full-time student" means a student who is carrying a full-time academic workload, other than by correspondence, measured in terms of:

(a) Course work or other required activities as determined by the institution in which the student is enrolled, including any combination of courses, work experience, research or special studies which the institution requires of the student to consider him as being engaged in full-time study, and which amounts to the equivalent of a minimum of twelve (12) semester hours or twelve (12) quarter hours per academic term for institutions utilizing trimesters, semesters, or quarter hour system, or which consists of a program requiring the minimum of twenty-five (25) clock hours per week for those institutions that do not utilize such systems; and

(b) The tuition and fees customary for full-time study at that institution.

(13) The definition of "grant" is governed by KRS 164.740(10).

(14) "Kentucky tuition grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(15) "KHEAA grant" means awards of student financial assistance grants under the college access program or the Kentucky tuition grant program or a combination of the two (2).

(16) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards to an individual, measured in terms of the number of semesters during which a KHEAA grant is disbursed to a full-time student and not fully refunded. The limit is depleted by one (1) semester:

(a) For any KHEAA grant disbursed to a full-time student in a semester; or

(b) By a CAP grant recipient enrolled less than full time, who receives the cumulative equivalent amount of CAP grant that would have been received by a full-time CAP grant recipient using the then current maximum CAP grant.

(17) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(18) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:120 through 5:145.

(19) "Resident of Kentucky" or "resident" means a person who is classified as an in-state student in accordance with criteria set forth in the "Residency Classification Policy" at 13 KAR 2:040, as adopted and from time to time amended by the Council on Higher Education.

(20) "Total cost of education" for an academic year means an amount determined for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

Section 2. 11 KAR 5:010, Authority, purpose, name of grant programs, is hereby repealed.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: There are anticipated to be over 79,000 KHEAA grant applicants for the 1992-93 academic year, and 30,241 KHEAA grant awards are expected to be made.

(a) Direct and indirect costs or savings to those affected: There are no known direct or indirect costs associated with this regulation, because this regulation merely prescribes common definitions for other regulations in Chapter 5 of Title 11.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs, because this regulation merely prescribes common definitions for other regulations.

(b) Reporting and paperwork requirements: None. This regulation does not impose any reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative body by this regulation, because it merely prescribes common definitions for other regulations.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs, because this regulation merely prescribes common definitions for other regulations.

(b) Reporting and paperwork requirements: None. This regulation does not impose any reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative under KRS Chapter 13A would be to specify definitions as the first section of each regulation. This approach was previously used, but has been changed to reduce duplication and simplify the regulations in Chapter 5 of Title 11 to make them more readable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation contains definitions that were previously contained in 11 KAR 5:010 through 5:080. Those regulations are being amended to eliminate those definitions, and thus preclude duplication and overlap.

(a) Necessity of proposed regulation if in conflict: See #(4) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See #(4) above.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation merely prescribes common definitions for other regulations. Therefore, the concept of tiering would not apply.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:033. KTG student eligibility requirements.

RELATES TO: KRS 164.753(4), 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation sets forth student eligibility requirements for the Kentucky tuition grant program.

Section 1. Eligibility of Students. In order to qualify for disbursement of a Kentucky tuition grant, a student shall:

(1) Be a resident of the Commonwealth of Kentucky;

(2) Be enrolled as a full-time student in an eligible program of study;

(3) Be enrolled at an educational institution and not have

previously earned a first baccalaureate or professional degree;

(4) Be determined by the authority, in accordance with 11 KAR 5:120 through 5:140, to have established financial need for the KTG;

(5) Have remaining KHEAA grant limit. For purposes of Kentucky tuition grant, a student enrolled in a two (2) year institution shall be limited to five (5) semesters of KHEAA grant eligibility. A student enrolled in a four (4) year institution shall be limited to nine (9) semesters of KHEAA grant program eligibility (including any KHEAA grant limit used at a two (2) year institution);

(6) Not receive financial assistance in excess of need to meet educational expenses;

(7) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;

(8) Satisfy all financial obligations to the authority and to any educational institution. Ineligibility under this subsection may be waived for cause by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;

(9) Be a citizen of the United States or an eligible noncitizen; and

(10) Be receiving full-time credit at an educational institution in an eligible program of study and paying full-time tuition and fees to that institution, if the student is studying abroad or off-campus.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: There are anticipated to be over 79,000 applicants for student financial assistance in Kentucky for the 1992-93 academic year. A majority of those applicants will be applying for KHEAA grants. Of this group, there are anticipated to be 7,373 Kentucky tuition grant awards for the 1992-93 academic year.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation imposes eligibility limits upon the applicants for Kentucky tuition grants. There are no costs to the applicants imposed by this regulation. However, $8,000,000 is appropriated for KTG awards in the first year of the 1992-94 biennium (averaging $1,085 per recipient), saving each of the anticipated 7,373 recipients that amount of tuition expense.

2. Continuing costs or savings: $8,223,500 is appropriated for KTG awards in the second year of the biennium.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None. This regulation imposes eligibility limits for KTG awards, and those qualifying for the grant will incur no additional costs or savings.

(b) Reporting and paperwork requirements: None. This regulation imposes no reporting requirements.

(2) Effects on the promulgating administrative body: Costs of administration of the KTG program are funded by agency receipts.

(a) Direct and indirect costs or savings:

1. First year: $848,930 is appropriated for administration of all student grant, scholarship, and work-study programs for the first year of the biennium. Included in that amount is an unallocated amount for the KTG program.

2. Continuing costs or savings: $869,000 is appropriated for all student aid programs in the second year of the biennium.

3. Additional factors increasing or decreasing costs: None. This regulation merely prescribes eligibility criteria.

(b) Reporting and paperwork requirements: None. This regulation prescribes eligibility criteria and does not itself impose any reporting or record retention requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. This regulation prescribes eligibility requirement minimally necessary to conform to the statutory mandates of KRS 164.753(4) and 164.785, and assure awards to financially needy Kentucky students.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: This regulation replaces 11 KAR 5:030 which expired due to an objection to a provision contained in the prior regulation. This proposed regulation omits references to the State Student Incentive Grant program and the particular provision previously found objectionable.

TIERING: Was tiering applied? No. This regulation prescribes eligibility criteria of general applicability for students seeking Kentucky Tuition Grants. Tiering was not applied, because participation in this program is voluntary, and all students will be afforded an equal opportunity, within statutory guidelines, to demonstrate financial need.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:034. CAP grant student eligibility.

RELATES TO: KRS 164.744(2), 164.753(4)

STATUTORY AUTHORITY: KRS 164.748(4), HB 468 (1992 RS), Part I, F. 43, p. 47

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs of student financial assistance, including federal funds under the state student incentive grant program. House Bill 468 authorized and directed the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. That budget bill also authorized the authority to promulgate administrative regulations pertaining to administration of those grants, to use appropriated funds to match federal funds, and to conform those regulations to federal law for full participation in the state student incentive grant program. This regulation establishes student eligibility requirements for the college access program. This regulation substantially duplicates provisions of 11 KAR 11:010 adopted under authority of a prior biennial budget, and therefore contains a section repealing that prior regulation.

Section 1. In order to qualify for disbursement of a college access program grant, a student shall:

(1) Be a resident of Kentucky;

(2) Be enrolled at an educational institution for six (6) or more semester hours in an eligible program of study and not have previously earned a first baccalaureate or professional degree;

(3) Demonstrate financial need in accordance with 11 KAR 5:120 through 5:145 for CAP grant assistance;

(4) Have remaining KHEAA grant limit. For purposes of a CAP grant, a student enrolled in a two (2) year institution shall be limited to five (5) semesters of KHEAA grant program eligibility. A student enrolled in a four (4) year institution shall be limited to nine (9) semesters of KHEAA grant program eligibility (including any KHEAA grant limit used at a two (2) year institution);

(5) Not receive financial assistance in excess of need to meet educational expenses;

(6) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;

(7) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 and to any educational institution, except that ineligibility for this reason may be waived by the executive director of the authority,

at the recommendation of a designated staff review committee, for cause;

(8) Be a citizen of the United States or an eligible noncitizen; and

(9) Be receiving full-time credit at an educational institution in an eligible program of study and paying full-time tuition and fees to that institution, if the student is studying abroad or off-campus.

Section 2. 11 KAR 11:010, College access program grants establishment and eligibility, is hereby repealed.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: There are anticipated to be over 79,000 applicants for student financial assistance in Kentucky for the 1992-93 academic year. A majority of those applicants will be applying for KHEAA grants. Of this group, there are anticipated to be 22,868 college access program grant awards for the 1992-93 academic year.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation imposes eligibility limits upon the applicants for CAP grants. There are no costs to the applicants imposed by this regulation. However, $12,326,300 is appropriated for CAP awards in the first year of the 1992-94 biennium (averaging $539 per recipient), saving each of the anticipated 22,868 recipients that amount of tuition expense.

2. Continuing costs or savings: $12,672,300 is appropriated for CAP awards in the second year of the biennium.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None. This regulation imposes eligibility limits for CAP awards, and those qualifying for the grant will incur no additional costs or savings.

(b) Reporting and paperwork requirements: None. This regulation imposes no reporting requirements.

(2) Effects on the promulgating administrative body: Costs of administration of the CAP program are funded by agency receipts.

(a) Direct and indirect costs or savings:

1. First year: $848,930 is appropriated for administration of all student grant, scholarship, and work-study programs for the first year of the biennium. Included in that amount is an unallocated amount for the CAP program.

2. Continuing costs or savings: $869,000 is appropriated for all student aid programs in the second year of the biennium.

3. Additional factors increasing or decreasing costs: None. This regulation merely prescribes eligibility criteria. However, the administrative requirements for the CAP grants have been tailored as closely as practicable to those of the Kentucky Tuition Grant program to streamline the common administration of both programs.

(b) Reporting and paperwork requirements: None. This regulation prescribes eligibility criteria and does not itself impose any reporting or record retention requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. This regulation prescribes eligibility requirements minimally necessary to conform to the statutory mandates of KRS 164.753(4) and HB 468, and assure awards to financially needy Kentucky students.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 11 KAR 11:010 was promulgated under authority of the previous (1990-92) biennial budget bill.

(a) Necessity of proposed regulation if in conflict: This regulation is necessary to reflect the new statutory authority provided by HB 468 (the 1992-94 biennial budget bill). It transfers the substance of, and repeals, 11 KAR 11:010 in order to place the requirements for the CAP grants in the same chapter of the Kentucky Administrative Regulations as the requirements for the Kentucky Tuition Grant program for ease of common administration of the two programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This regulation repeals 11 KAR 11:010.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation prescribes eligibility criteria of general applicability for students seeking College Access Program grants. Tiering was not applied, because participation in this program is voluntary, and all students will be afforded an equal opportunity, within statutory guidelines, to demonstrate financial need.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:036. State student incentive grant program eligibility.

RELATES TO: KRS 164.744(2), 164.748(7), (8), 164.753(4), 34 CFR Part 692, subparts A, C, E, Part 668, subparts A, C

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4), HB 468 (1992 RS), Part I, F. 43, p. 47, 34 CFR 692.21, 692.40, 692.41

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority is authorized to receive and administer funds, including federal funds, and award grants to students. HB 468 (1992 RS), Part I, F. 43, p. 47 appropriates funds for college access program grants but provided that "nothing in the foregoing shall be construed to limit the authority's capability to use these funds to match federal funds, make grant awards, or adopt rules and regulations that conform to requirements of federal laws and regulations for full participation in federally funded student financial assistance programs." Some of the grants awarded under the CAP grant program will be made with funds received through or encumbered under the state student incentive grant program. 34 CFR 692.21(b) requires the authority to award grants only to students meeting federal eligibility criteria. 34 CFR 692.21(c) and (d) authorize the authority to establish the award amount and criteria for financial need within certain limits. This regulation sets forth the student eligibility criteria and establishes the award amount and criteria of financial need.

Section 1. Definitions. For purposes of this regulation the term "state student incentive grant" means a grant funded under the program authorized under Title IV, Part A, subpart 3 of the federal act and 34 CFR Part 692.

Section 2. Federal Student Eligibility. The federal eligibility requirements for a student to receive a state student incentive grant are governed by 34 CFR 692.40, 52 Federal Register 45432, November 27, 1987 and 34 CFR Part 668, subpart A, 51 Federal Register 41921, November 14, 1986 as amended at 52 Federal Register 45724, December 1, 1987 and 53 Federal Register 49147, December 6, 1988 and subpart C, 50 Federal Register 26953, June 28, 1985 as amended at 51 Federal Register 43161, November 28, 1986, 52 Federal Register 45734, December 1, 1987, and 53 Federal Register 49147, December 6, 1988.

Section 3. Eligible students who demonstrate financial need in accordance with 11 KAR 5:120 through 5:145 shall, to the extent of funds available for such purpose, be designated as receiving state student incentive grants in amounts not exceeding the maximum awards set forth in 11 KAR 5:145.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: April 28, 1992
FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: It is anticipated that 22,868 College Access Program grant awards will be made for the 1992-93 academic year. It is anticipated that 2,215 of those awards will be partially funded with $775,400 in federal funds received under the State Student Incentive Grant Program for students who meet federal eligibility requirements.

(a) Direct and indirect costs or savings to those affected:

1. First year: $775,400 in federal funds will be matched by an equal amount of CAP grant funds for awards totalling $1,550,800 which will save the recipients the corresponding amount in tuition and fees.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Federal funding through the State Student Incentive Grant program is available on the basis of demonstrated financial need for students attending any of the educational institutions participating in the CAP program. Therefore, there is no discernable impact upon costs or competition.

(b) Reporting and paperwork requirements: Federal student eligibility criteria are substantially similar to CAP grant eligibility, with the primary differences related to Selective Service registration requirements and prohibition of aid to those convicted of drug-related offenses. Therefore, there is no appreciable difference in reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There is no significant cost to the agency associated with this regulation. The regulation primarily is intended to assure compliance with federal eligibility criteria to receive at least $775,400 in each year of the biennium.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The award of federal funds under the State Student Incentive Grant program necessitates generation of a report in October of each year reflecting the usage of the federal funds and matching state funds and the students to whom they are awarded.

(3) Assessment of anticipated effect on state and local revenues: See #(2)(a)1 above.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There was no viable alternative to assuring by regulation that recipients meet federal eligibility requirements in order to be designated as receiving federal funds.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: The designation of which CAP grant awards will be funded with federal SSIG funds will not impose any extra responsibilities or burdens upon student grant recipients or participating institutions.

TIERING: Was tiering applied? No. This regulation imposes no extra responsibilities or burdens upon College Access Program participants. The designation is the responsibility of the agency. Therefore, the concept of tiering does not apply.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR Part 692, subparts A, C, and E and 34 CFR Part 668, subparts A and C.

2. State compliance standards. The regulation adopts the federal standards (see #3 below) contained in the foregoing federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations require that a student must be enrolled or accepted for enrollment on at least a half-time basis at an eligible educational institution; have demonstrated financial need according to criteria approved by the U.S. Secretary of Education; be pursuing an eligible program of study; make satisfactory progress toward the completion of that program of study; not be in default on an obligation to repay federal student financial assistance funds; and provide evidence of compliance with Selective Service registration requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation adopts in their entirety the federal regulations setting forth student eligibility requirements. Therefore, the regulation does not impose stricter, additional, or different requirements than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4)
STATUTORY AUTHORITY: KRS 164.748(4), HB 468 (1992 RS), Part I, F. 43, p. 47
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation prescribes the award determination procedures for the CAP grant program. The provisions of this regulation substantially duplicate 11 KAR 11:030. Therefore, this regulation contains a repeal of 11 KAR 11:030.

Section 1. Each application shall be reviewed for determination that all eligibility requirements set forth in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be $3,000 or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (3) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution shall be the prevailing full-time student tuition charge at publicly supported community colleges in Kentucky at that time.

(2) Except as provided in subsection (3) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution shall be the prevailing tuition charge per semester credit hour at publicly supported community colleges in Kentucky (not in excess of the maximum specified in subsection (1) of this section).

(3) The maximum awards specified in subsections (1) and (2) of this section shall be adjusted by the authority as necessary to conform those maximums to the tuition rate generally charged for attendance at the Commonwealth's publicly supported community colleges, as determined by the Council on Higher Education.

Section 3. Minimum KHEAA Grant. The minimum KHEAA grant awarded to an eligible full-time student for an academic year shall be $200.

Section 4. A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award. A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books. A semester award shall not exceed tuition and fee charges for that semester. No KHEAA grant award shall be made for a summer academic term.

Section 5. In no event shall the KHEAA grant award exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance. The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student. The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

Section 6. If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked. If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 7. If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction. If the grant for the fall academic term has already been disbursed, then the reduction shall be made to the spring disbursement. If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 8. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

Section 9. 11 KAR 11:030, Award determination procedure, is hereby repealed.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: April 28, 1992

FILED WITH LRC: May 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, June 29, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, June 24, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: There are anticipated to be over 79,000 applicants for student financial assistance in Kentucky for the 1992-93 academic year. A majority of those applicants will be applying for KHEAA grants. Of this group, there are anticipated to be 22,868 college access program grant awards for the 1992-93 academic year.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation sets forth criteria for demonstrating financial need and imposes limits upon the CAP award amounts. There are no costs to the applicants imposed by this regulation. However, $12,326,300 is appropriated for CAP awards in the first year of the 1992-94 biennium. Based upon historical usage and the known tuition charges for public institutions, the average CAP grant is expected to be $539 per recipient, saving each of the anticipated 22,868 recipients that amount of tuition expense.

2. Continuing costs or savings: $12,672,300 is appropriated for CAP awards in the second year of the biennium.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None. This regulation sets forth award maximums for full-time and part-time students that are equal to the community college tuition rate, and provides the same award criteria whether the student is attending a public, private nonprofit, or proprietary degree granting institution. Accordingly, those qualifying for the grant will incur no new costs by reason of promulgation of this regulation nor will there be any effect upon competition among participating institutions for student grant recipients.

(b) Reporting and paperwork requirements: None. This regulation imposes no reporting requirements additional to those already required by other student financial assistance programs.

(2) Effects on the promulgating administrative body: Costs of administration of the CAP program are funded by agency receipts.

(a) Direct and indirect costs or savings:

1. First year: $848,930 is appropriated for administration of all student grant, scholarship, and work-study programs for the first year of the biennium. Included in that amount is an unallocated amount for the CAP program.

2. Continuing costs or savings: $869,000 is appropriated for all student aid programs in the second year of the biennium.

3. Additional factors increasing or decreasing costs: None. This regulation prescribes criteria for demonstrating financial need, and the administrative requirements for the CAP grants have been tailored as closely as practicable to those of the Kentucky Tuition Grant program to streamline the common administration of both programs.

(b) Reporting and paperwork requirements: None. This regulation prescribes award minimums and maximums and does not impose any additional reporting or record retention requirements upon the agency.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. This regulation prescribes award amounts tied to the cost of tuition at public community colleges within the statutory mandates of KRS 164.753(4) and HB 468 and assures awards to financially needy Kentucky students.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 11 KAR 11:030 was promulgated under the authority of the previous (1990-92) biennial budget bill and contains similar provisions.

(a) Necessity of proposed regulation if in conflict: This regulation is necessary to reflect the new statutory authority provided by HB 468 (the 1992-94 biennial budget bill). It transfers the substance of, and repeals, 11 KAR 11:030 in order to place the requirements for the CAP grants in the same chapter of the Kentucky Administrative Regulations as the requirements for the Kentucky Tuition Grant program for ease of common administration of the two programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This regulation repeals 11 KAR 11:030.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation prescribes financial need criteria of general applicability for students seeking College Access Program grants. Tiering was not applied, because participation in this program is voluntary, and all students will be afforded an equal opportunity, within statutory guidelines, to demonstrate financial need and receive CAP grant awards based upon that need.

DEPARTMENT OF PERSONNEL

101 KAR 2:036. Compensation plan and pay incentive systems.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Appointments. Initial appointments shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and experience over and above the minimum requirements set for the job classification. Employees possessing qualifications similar to the applicant being appointed that are employed in the same job classification, by the same agency, in the same county shall have their salaries adjusted by the appointing authority to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 2. Reentrance to State Service. (1) Appointing authorities, with the approval of the commissioner, may place reemployed, reinstated, or former employee probationally appointed at a salary:

(a) Which is the same as that paid at the time of separation from state service if such salary is within the current pay grade;

(b) Higher than that paid at the time of separation from state service due to salary schedule or pay grade adjustments;

(c) In accordance with the standards used for making new appointments; or

(d) Lower than that paid at the time of separation from the classified service if such salary is within the current pay grade.

(2) Former employees who were separated from state service by layoff and who are reinstated or reemployed in the same or a similar job classification within five (5) years from the date of layoff may receive the salary they were receiving at the time of layoff, even if such salary is above the maximum of the pay grade.

(3) Former employees reemployed, reinstated or probation-ally appointed to a salary:

(a) Below the midpoint of the pay grade shall be considered for a probationary increment at the time of completion of the probationary period;

(b) Which equals or exceeds the midpoint of the pay grade may be considered for a probationary increment at the time of completion of the probationary period. If such employee is not considered for an increment upon completion of the probationary period, he shall be considered for an increment at the beginning of the month following completion of twelve (12) months service from the date of reemployment, reinstatement or appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of not less than five (5) percent upon promotion. In no case shall the employee's salary be below the minimum of the higher grade following promotion. Employees completing a promotional probationary period may receive a five (5) percent promotional increase at the beginning of the month following completion of the probationary period. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a ten (10) percent or fifteen (15) percent salary increase over the employee's previous salary. A promotional increase shall not change the employee's regular increment date.

(2) Demotion. An employee who is demoted may have his salary changed to a rate which is in the pay grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Reclassification. An employee who is advanced to a higher pay grade through reclassification shall receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the new pay grade. An employee who is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification.

(4) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade. An employee who is placed in a lower pay grade through reallocation shall receive the same salary he was receiving prior to reallocation.

(5) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 2:070, Section 2, may receive a five (5) percent increase upon detail to a higher job classification, except that in no case shall the employee's salary after such increase be below minimum of the higher pay grade.

(6) Reversion.

(a) An employee who is reverted while serving a promotional probationary period following promotion, or following detail to special duty to a higher job classification, shall have his salary changed to the rate received prior to such promotion or detail to special duty and is entitled to all salary advancements and adjustments he would have received had he not left the job classification.

(b) An employee who is reverted to a position in the classified service from a position in the unclassified service shall have his salary changed to the rate received at the time he left the classified service and is entitled to all salary advancements and adjustments he would have received had he not left the classified service.

(7) Pay grade changes. An employee who is advanced to a higher pay grade through a class reevaluation and grade adjustment under Section 7 of this regulation may receive a salary increase of five (5) percent or ten (10) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade.

(8) Other salary adjustments.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, effective on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Subject to approval by the commissioner, an appointing authority may request a five (5) percent salary adjustment when a special entrance rate is established under Section 7(3) of this regulation.

Section 4. Salary Advancements. (1) Probationary increments. Full-time and part-time employees who complete an initial probationary period with satisfactory performance shall be granted an increment at the beginning of the month following completion of the probationary period, except as specified under Section 2(3) of this regulation. The service may be provisional or probationary.

(2) Annual increment dates shall be established:

(a) Following completion of an initial probationary period, with satisfactory performance, or following completion of twelve (12) months service from the date of appointment, reinstatement, or reemployment, pursuant to Section 2(3) of this regulation.

(b) When an employee returns from leave without pay pursuant to subsection (4) of this section.

(3) Annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; or

(i) Is promoted or receives a promotional increase after completion of a promotional probationary period.

(4) Return from leave without pay. Employees returning to duty

from leave without pay shall receive an annual increment when they have completed twelve (12) months of service since the date they last received an annual increment.

(5) Service computation. In computing service for the purpose of determining annual increment eligibility, in those cases where an employee is changed from part time to full time, part-time service shall be counted in determining increment eligibility for a full-time employee. In those cases where an employee is changed from full time to part time, full-time service shall be counted in determining increment eligibility for a part-time employee.

Section 5. Educational Achievement Award. The participation of an appointing authority in the program for educational achievement awards is contingent upon adequate funding, to be determined by the appointing authority through the budgetary process, for all eligibles within the agency. Upon request of the appointing authority and subject to the approval of the commissioner, a permanent employee, with status may receive one (1) lump sum educational achievement award per fiscal year:

(1) For satisfactorily completing outside of work hours 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses, must have been completed after a merit employee initially gained permanent status in state government. Employees shall not receive credit for courses taken while on educational leave, for hours paid for by the agency through tuition assistance, or for courses which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than $2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) For receiving outside of work hours an approved high school diploma, high school equivalency certificate, or a passing score on the GED test. The approved diploma, certificate, or passing score must have been obtained on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the GED test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than $2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the GED test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) To apply for an educational achievement award an employee shall submit the educational achievement request form DPT-10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent together with official transcripts or grade reports for the courses completed) to the appointing authority or his designee. In compliance with the standards set forth in this regulation, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval. A lump sum educational achievement award shall not be added to the employee's base salary or wages.

Section 6. Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades. The commissioner may authorize a salary increase for those employees who are at or above the minimum rate based upon the availability of funds. The percentage of such increase shall be determined by the commissioner and shall be uniform for all eligible employees.

Section 7. Class Reevaluation and Grade Adjustment. (1) Class reevaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in subsection (1) of this section, the commissioner may make a new or different pay grade applicable to a class of positions. Persons currently employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary adjustment under Section 3(7) of this regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees in a class assigned to a lower pay grade through class reevaluation shall retain their current salary.

(3) Recruitment difficulties. Whenever the commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may, at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same county are adjusted in salary to the same rate.

Section 8. Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100, Section 4, and the Fair Labor Standards Act 29 USC §201, et seq. and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime payments shall not be added to base salary or wages.

Section 9. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such maintenance shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the commissioner after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 10. Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those job classifications in which employees are directed to work an evening or night shift. Once authorized, this premium shall apply to those employees directed to work an evening or night shift in a job classification for which the shift premium was approved. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment.

SHIRLEY J. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 1992 at 9:30 a.m. in Room 285, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 386, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers

(1) Type and number of entities affected: Merit system employees; approximately 33,642.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None by this regulation. Funds for outstanding merit increases were not included in the 1992 budget.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No new impact.

(2) Effects on the promulgating administrative body: Permits continuity of current classification and compensation system.

(a) Direct and indirect costs or savings: Funds not budgeted. No direct impact.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: Eliminates the outstanding merit increase in form 101 KAR 2:035, Section 11, which was the basis for the expiration of that regulation.

TIERING: Was tiering applied? Yes. Tiering was applied to distinguish classified and unclassified employees who are covered by 101 KAR 3:045. That regulation did not expire but the OMI is not funded in FY 1992.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 CFR 9209, March 4, 1983).

2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

DEPARTMENT OF PERSONNEL

101 KAR 2:046. Applications, qualifications and examinations.

RELATES TO: KRS 18A.030, 18A.110, 18A.120

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110, 18A.150

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern open competitive exams to test the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the commissioner. This regulation is necessary to implement these statutory requirements and to assure uniformity in administering exams.

Section 1. Notices of Examinations. Examinations for entrance to the classified service shall be conducted on an open-competitive basis. For those job classifications in which there is expected to be a considerable and recurring need of eligibles, the commissioner shall establish a recruitment program which shall be both positive and continuous. Under such plan, applications may be accepted at any time and examinations held whenever and wherever the commissioner deems it desirable for the service. For those job classifications for which continuous recruitment is not needed, special announcements will be used. Eligibles will be listed in rank order of score irrespective of date on which the examination was taken. Notice of examinations shall be announced publicly fifteen (15) days prior to opening and may be distributed to public officials, employment service offices, newspapers, radio stations, educational institutions, professional and vocational societies, other media and such other individuals and organizations as the commissioner may deem expedient. The public notice of examination shall specify the title and minimum salary of the job classifications; the minimum qualifications required; the final date on which application will be received; the relative weights to be assigned to different parts of the examination; and all pertinent information and requirements.

Section 2. Minimum Qualifications for Filing. Open-competitive examinations shall be open to all applicants who meet the standards or requirements fixed by the commissioner with regard to education, experience, age, physical condition, and such other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency the duties of the position.

Section 3. Filing Applications. (1) All applications shall be made on forms prescribed by the commissioner. Such application may require information concerning personal characteristics, education, experience, references, and other pertinent information. When the nature of the work is such that age limits are necessary, the commissioner after consultation with the appointing authority may approve the age limits, which shall be stated in the examination announcement. All applications shall be signed and the truth of the statements contained therein certified by such signatures. Applicants must meet the minimum qualifications specified in announcements as to education and experience, but in no case shall admittance to the examinations constitute assurance of a passing grade.

(2) For those job classifications for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that applications will be received until further notice.

(3) For those job classifications for which continuous recruitment is not needed, special announcement bulletins will be used. Applicants shall have fifteen (15) calendar days to apply for these special openings. The applications will be processed and those applicants who meet the minimum requirements will be notified of the testing dates.

Section 4. Advance Examinations. Any applicant who does not meet minimum requirements as to education but who will meet these requirements as a result of the completion of further educational work which he has scheduled for the six (6) months following the date of receipt of application, may be allowed to take the examination at the discretion of the commissioner. An applicant taking the examination under this provision shall have his or her name entered on the register up to thirty (30) days prior to completing the educational requirements.

Section 5. Character of Examinations. Examinations shall be practical in nature, constructed to reveal the capacity of the candidate for the particular job classification for which he is competing and his general background and related knowledge, and shall be rated impartially. The commissioner may use a rating of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness which in his judgment serves the need to discover the relative fitness of applicants.

Section 6. Conduct of Examinations. (1) Examinations shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) The commissioner may designate monitors in various parts of the Commonwealth to take charge locally of examinations under instructions prescribed by him, provide for the compensation of such monitors, and make arrangements for the use of public buildings in which to conduct the examinations.

(3) Retest procedures.

(a) For open continuous testing an applicant may be admitted to the same exam or its alternate no more than two (2) times within a regular workweek.

(b) For open continuous testing an applicant shall not be permitted to take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date such test is taken.

(c) Retest procedures for examinations listed on special announcements shall be stated on the bulletin.

(d) An eligible who is removed from a register, who fails to make himself available to an appointing authority for consideration or who declines appointment by an appointing authority shall not be allowed to retest for the job class from which removed for six (6) months from the date of removal unless he has been restored for reasons satisfactory to the commissioner or in accordance with the decision of the board on appeal.

Section 7. Rating Examinations. The commissioner shall determine the rating or standing of applicants on the register for all examinations. Such final rating shall be based upon a weighted average of the various parts of the total examination. All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) When the rating of education and experience forms a part of the total examination, the commissioner shall determine a procedure for the evaluation of the education and experience qualifications of the applicants. The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience and the pertinency of the education.

(2) The commissioner shall investigate the candidate's educational record form. The commissioner may investigate the candidate's work history. If the results of this investigation bring out information affecting the rating of education and experience, the commissioner may rate the candidate accordingly or make the necessary revision of the rating and so notify the candidate.

(3) When the knowledges, skills and abilities for a job classification are those which cannot best be measured by written, performance, or training and experience examination the commissioner may determine the selection method for the classification to be qualifying. When a classification is determined to be qualifying the commissioner shall notify the Personnel Board of the classification and the minimum requirements. The commissioner shall maintain a list of those classifications which are qualifying along with the minimum requirements for each for public review.

Section 9. Oral Examinations. When an oral examination forms a part of the total examination for a position, the commissioner shall appoint one (1) or more oral examination panels as needed. An oral examination panel shall consist of three (3) or more members who shall be known to be interested in the improvement of public administration and in the selection of efficient government personnel of whom one (1) shall be technically familiar with the character of work in the position for which the applicants will be examined. Whenever practicable, all candidates for the same job classification who qualify for the oral examination shall be rated by the same oral examination panel. A member of an oral examination panel shall disclose each instance in which he knows the applicant personally and may refrain from rating such applicant.

Section 10. Notice of Examination Results. Each competitor shall be notified of his final rating as soon as the rating of the examination has been completed. Eligibles shall be entitled to information concerning their relative position on the register upon request and presentation of proper identification.

Section 11. Adjustment of Errors. An error in the rating of an examination, if called to the attention of the commissioner within thirty (30) days after receipt by the applicant of the notice of examination results shall be corrected by the commissioner provided, however, that such corrections shall not invalidate any certification and appointment previously made.

Section 12. Examination Records. The commissioner shall be responsible for the maintenance of all records pertinent to examination programs. Applications and other necessary examination records shall be kept during the life of the register.

SHIRLEY J. CLARK, Commissioner
BRERETON C. JONES, Governor

APPROVED BY AGENCY: May 12, 1992

FILED WITH LRC: May 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 1992 at 9:30 a.m. in Room 285, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 386, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers

(1) Type and number of entities affected: Approximately 40,000 applicants (based on FY 90-91 figures).

(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: No change anticipated.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change anticipated.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. This regulation applies to applicants for classified service positions, only.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 CFR 9209, March 4, 1983).
2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.
3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:
(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
(b) Providing equitable and adequate compensation.
(c) Training employees, as needed, to assure high quality performance.
(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.
(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

DEPARTMENT OF PERSONNEL

101 KAR 2:056. Registers.

RELATES TO: KRS 18A.005, 18A.110, 18A.120
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.040, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the commissioner. This regulation is necessary to comply with these statutory requirements.

Section 1. Notification of Register Vacancies. It shall be the duty of the appointing authorities to notify the commissioner as far in advance as possible of vacancies in full-time or part-time classified positions which may occur in the agencies.

Section 2. Use of Related Registers. The commissioner shall select registers from job classifications for which the minimum qualifications are comparable to or higher than those required for the job classification in which the vacancy exists. The commissioner may, if appropriate, rerate training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

Section 3. Duration of Registers. When a register becomes so depleted that the preparation of usable certificates for a major portion of the imminent vacancies of the job classification is impracticable, the register shall be considered exhausted. The register which has become exhausted shall be considered expired upon the administration of a superseding examination and the establishment of a register on the basis of that examination. When a register becomes exhausted, the commissioner shall send to each eligible remaining on such register a notification prior to the administration of a superseding examination.

Section 4. Replenishment of Registers. If the commissioner determines that a register, although not exhausted, is inadequate for the filling of anticipated vacancies, he may announce an open competitive examination for the purpose of replenishing such register.

Section 5. Promotional Register. At the request of the appointing authority, the commissioner shall prepare a register of status employees interested in promotion to a full-time or part-time classified position who meet the minimum requirements and has obtained a passing grade on the competitive promotional examination. The names of such employees shall be placed on the register in the order of their final ratings, starting with the highest. The register shall be certified to agencies for their consideration in filling vacancies from a promotional register.

Section 6. Full-time or Part-time Reemployment Registers. The commissioner shall prepare reemployment registers.

SHIRLEY J. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 1992 at 9:30 a.m. in Room 285, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 386, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: Approximately 33,642 merit system employees.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reduces paperwork.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: The elimination of the job bank is expected to have a negative impact on job mobility. The change is due to the determination that the Job Bank provision was not specifically authorized by statute.

TIERING: Was tiering applied? No. Not applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 CFR 9209, March 4, 1983).

2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

DEPARTMENT OF PERSONNEL

101 KAR 2:066. Certification and selection of eligibles for appointment.

RELATES TO: KRS 18A.030, 18A.110, 18A.165

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the establishment of eligible lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the exam. This regulation is necessary to comply with these statutory requirements.

Section 1. Request for Certification of Eligibles. To fill a vacancy by selection of an eligible from a register established on the basis of an open-competitive examination, the appointing authority shall submit a request for certification to the commissioner upon a prescribed form. This requisition may be for one (1) or more positions in the same class, in the same county, and shall indicate the number and identity of positions to be filled and the title of the job classification in which they have been allocated and specify all other pertinent information which the appointing authority and the commissioner deem necessary. The appointing authority shall make such request as far in advance as possible of the date the employee is to begin work.

Section 2. Certification of Eligibles. Upon receipt of a requisition, the commissioner shall certify and submit in writing to the appointing authority the names of available persons eligible for the appointment. If one (1) position is involved, he shall certify and submit from the register for that job classification the names of the persons whose scores are included in the highest five (5) scores earned on the examination, providing the commissioner shall fix a reasonable maximum number of eligibles certified. If more than one (1) vacancy is involved, either in one (1) or more agencies, the commissioner shall certify sufficient additional names for the agencies' consideration in filling the total number of vacancies by procedures to retain orderly consideration of eligibles; however, each appointment must be made from the eligibles with the five (5) highest scores. Scores shall be considered in whole numbers. If the register, established as a result of the open-competitive examination for a specific class, is exhausted, the commissioner shall certify and submit names in accordance with the above procedure. The life of a certificate during which action may be taken shall be forty-five (45) days from the date of issue unless otherwise specified on the certification. Any appointment made from such certificate during that time shall not be subject to any change in the condition of the register taking place during that period.

Section 3. Availability. An eligible may at any time during the life of a register have himself listed as available or not available for appointment to a position of that job classification in any county or counties in the state by filing notice to such effect with the commissioner.

Section 4. Selective Certification. (1) The appointing authority may specify in writing requirements of particular experience, education, or skill when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the particular experience, education, or skill essential for successful performance he may certify in order of rank on the register the names of those persons who possess those qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) The appointing authority may specify in writing exceptional

requirements of particular characteristics when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the exceptional requirement of the characteristic essential for successful performance, he may certify in order of rank on the register the names of those persons who possess the qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

Section 5. Selection. The final selection by the appointing authority shall be reported in writing to the commissioner. At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the commissioner the nonavailability of any eligibles passed over for that reason.

Section 6. Certification from the Promotional Register. Whenever a vacancy is to be filled from a promotional register established as a result of a competitive examination, the commissioner shall certify the names of eligibles in accordance with 101 KAR 2:056, Section 5.

Section 7. Certification of Names from the Reemployment Register. Whenever a vacancy is to be filled from a reemployment register, the commissioner shall certify the names of eligibles.

SHIRLEY J. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 1992 at 9:30 a.m. in Room 285, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 386, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: Unknown number of applicants for state employment.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. This regulation applies to applicants for employment in the classified service, only.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 CFR 9209, March 4, 1983).
2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.
3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:
(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
(b) Providing equitable and adequate compensation.
(c) Training employees, as needed, to assure high quality performance.
(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.
(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

DEPARTMENT OF PERSONNEL

101 KAR 2:076. Vacancies, detail to special duty and temporary overlap.

RELATES TO: KRS 18A.005, 18A.110, 18A.115, 18A.120
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the various types of appointments, such as probationary, emergency, provisional, reinstatement, and for such other regulations, not inconsistent with KRS Chapter 18A, as may be proper and necessary. This regulation is necessary to comply with these statutory requirements and replaces 101 KAR 2:070.

Section 1. Filling of Vacancies. All vacancies in the classified service which are not filled by promotion, transfer, or demotion, shall be filled by probationary appointment, reemployment of career employees or of laid-off employees, reversion, reinstatement, emergency appointment or provisional appointment.

Section 2. Detail to Special Duty. When the services of a permanent employee are needed in a position within an agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the commissioner. For detail to special duty the commissioner may waive the minimum requirements when requested by the appointing authority in writing.

Section 3. Temporary Overlap. With the prior approval of the commissioner, an agency may place an employee for training purposes or in the best interest of the state service, in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

SHIRLEY J. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 1992 at 9:30 a.m. in Room 285, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 386, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: Approximately 33,000 merit system employees.
(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 anticipated.
(2) Effects on the promulgating administrative body: No change anticipated.
(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: No change anticipated.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Not applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 CFR 9209, March 4, 1983).
2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.
3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:
(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
(b) Providing equitable and adequate compensation.
(c) Training employees, as needed, to assure high quality performance.
(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.
(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 3:022. License, tag, permit, and stamp fees.

RELATES TO: KRS 150.175, 150.180, 150.190, 150.200, 150.225, 150.235, 150.240, 150.280, 150.290, 150.485, 150.525, 150.603, 150.520, 150.630, 150.660, 150.670, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175, 150.180, 150.190, 150.225, 150.240, 150.280, 150.485, 150.525, 150.603, 150.620, 150.660, 150.670
NECESSITY AND FUNCTION: The commissioner, with the concurrence of the Fish and Wildlife Resources Commission, finds it necessary to establish the fee schedule in this regulation to generate the necessary funds to finance programs to protect, manage, and conserve the fish and wildlife resources of the state so a permanent and continued supply will be maintained for the benefit of present and future generations.

Section 1. Licenses, tags, permits and stamps listed in this

section shall be valid from March 1 through the last day of February the following year.
(1) Sport fishing licenses:
Statewide fishing license (resident): $12.50
Statewide fishing license (nonresident): $30.00
Joint statewide fishing license (resident): $22.50
Trout stamp (resident or nonresident): $5.00
(2) Commercial fishing licenses:
Commercial fishing license (resident) plus ten (10) resident commercial gear tags: $100.00
Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $500.00
(3) Commercial fishing gear tags (not to be sold singly):
Commercial fishing gear tags (resident) block of 10 tags: $10.00
Commercial fishing gear tags (nonresident) block of 10 tags: $75.00
(4) Hunting licenses:
Statewide hunting license (resident): $12.50
Statewide hunting license (nonresident): $95.00
Statewide junior hunting license (resident or nonresident): $6.25
Statewide waterfowl stamp (resident or nonresident): $7.50
(5) Combination hunting and fishing license (resident): $20.00
(6) Trapping licenses:
Trapping license (resident): $15.00
Trapping license (resident landowner/tenant): $7.50
Trapping license (nonresident): $115.00
(7) Big game permits:
Big game permit, deer (resident or nonresident): $21.00
Junior big game permit, deer (resident or nonresident): $12.50.
Big game permit, turkey (resident or nonresident): $17.50

Section 2. Licenses, tags, permits, and stamps listed in this section shall be valid for the calendar year in which they are issued.
(1) Live fish and bait dealer's licenses:
Live fish and bait dealer's license (resident): $30.00
Live fish and bait dealer's license (nonresident): $60.00
(2) Commercial mussel licenses:
Musseling license (resident): $300.00
Musseling license (nonresident): $1500.00
Mussel buyer's license (resident): $500.00
Mussel buyer's license (nonresident): $1500.00
(3) Commercial taxidermist license: $100.00
(4) Commercial guide licenses:
Commercial guide license (resident): $100.50
Commercial guide license (nonresident): $250.00
(5) Fur dealer's licenses:
Fur processor's license (resident): $150.00
Fur buyer's license (resident): $50.00
Fur buyer's license (nonresident): $230.00
(6) Nonresident hunting preserve license: $10.00
(7) Shooting preserve permit: $100.00
(8) Commercial fox hound training enclosure permit: $250.00
(9) Collecting permits:
Educational wildlife collecting permit: $10.00
Scientific wildlife collecting permit: $200.00
(10) Food permits:
Food permit for selling bobwhite quail from propagation farms only: $150.00
Retail food permit for propagated quail: $5.00
(11) Pay lake license:
First two (2) acres or less: $100.00
Per additional acre or part of acre: $20.00
(12) Bird dog training device permit: $10.00

Section 3. Licenses, tags, permits and stamps listed in this section shall be valid for one (1) year from the date of issue:
(1) Pet and propagation permits:
Commercial wildlife pet and propagation permit: $200.00
Fishery pet permit: $10.00
Commercial fish propagation permit: $100.00
(2) Fish transportation permit: $25.00

Section 4. Licenses, tags, permits and stamps listed in this section shall be valid for three (3) years from the date of issue.
(1) Falconry permit: $45.00
(2) Noncommercial wildlife pet and propagation permit: $75.00

Section 5. Licenses, tags, permits and stamps listed in this section shall be valid for the date or dates specified on each.
(1) Short-term nonresident licenses:
Three (3) day fishing license: $12.50
Fifteen (15) day fishing license: $20.00
Five (5) day hunting license (not valid for big game): $27.50
Three (3) day fur bearer's license: $40.00
(2) Wildlife transportation permit: $25.00
(3) Special commercial fishing permit: $500.00
(4) Commercial waterfowl shooting area permit: $100.00
(5) Shoot to retrieve field trial permits:
Per trial (maximum four (4) days): $50.00
Single day: $15.00

Section 6. Licenses, tags, permits and stamps listed in this section shall be valid on a per unit basis as specified.
(1) Bird bands (each): $.25
(2) Ballard waterfowl hunt (per person, per day): $15.00
(3) Horse stall rental (per space, per day): $2.00
(4) Dog kennel rental (per dog, per day): $.50
(5) Conservation education camp fee: $50.00

Section 7. Except for scientific or educational collecting permits as specified in 301 KAR 4:070 the licenses, tags, permits and stamps authorized by this regulation shall not be changed, altered, or defaced in any manner. All licenses, tags, permits and stamps are nontransferable.

Section 8. These fees shall apply to all licenses, tags, permits and stamps issued with an effective beginning date on or after January 1, 1993.

Section 9. 301 KAR 3:021, Hunting and fishing license fees, shall be repealed on March 1, 1993.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
BRENDA FRANK, Acting Secretary
APPROVED BY AGENCY: December 12, 1991
FILED WITH LRC: May 14, 1992 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 1992 at 9 a.m. at the Department of Fish and Wildlife Resources Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by June 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: Don R. McCormick, Commissioner, 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: The fee increases represented by this regulation will affect 1,067,987 individuals who pay fees for licenses, permits, tags and stamps. The majority of these are Kentucky residents.
(a) Direct and indirect costs or savings to those affected: Average cost of $468 to each licensee, per year above 301 KAR 3:021, which this regulation will replace.
1. First year: Same as above.
2. Continuing costs or savings: Same as above for every year thereafter.
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: Issuing existing licenses, permits, tags and stamps will not require any additional

reporting or paperwork requirements on the County Court Clerks or the licensed buyer. Transportation permits will require additional paperwork, by the central office only, and will require recordkeeping and fee collection associated with the issuance of an estimated 200 permits annually.

(2) Effects on the promulgating administrative body: This series of fee increases should result in a net revenue increase of about $5 million annually and require additional administrative costs associated with the issuance of an estimated 200 permits annually.

(a) Direct and indirect costs or savings: All direct and indirect costs associated with the issuance of the permits should be no more than $500 per year including salaries and fringe, supplies and postage.

1. First year: Same as above.

2. Continuing costs or savings: Same as above for every year thereafter.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: See above.

(3) Assessment of anticipated effect on state and local revenues: The totality of this increase should result in about $5 million net revenue, per year, for the Fish and Game Fund. A significant amount of this revenue will be collected at the local level through the county clerk offices and be forwarded on to the department.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Increasing fees is currently the only means of increasing department revenues. No alternatives exist at this time.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes in conflict with this proposed regulation. However, minor changes will be made by subsequent amendment to 301 KAR 2:080, propagation of game; pet permits, and 301 KAR 2:020, use of devices for taking and pursuing wildlife, to comply with this regulation.

(a) Necessity of proposed regulation if in conflict: The Fish and Wildlife Commission approved the changes reflected in the regulation. The conflicting sections of 301 KAR 2:080 do not reflect current commission or departmental policy and will be resolved.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Such efforts will be made as soon as practical.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. All fee increases represented in this regulation were established after taking into account the number of individuals affected, their resident or nonresident status, and whether these fees were for recreational or commercial activities.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes X No__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect all county court clerks.

3. State the aspect or service of local government to which this administrative regulation relates. Hunting and fishing licenses directly sold through the county clerk offices and the collection of monies from selected agents in the respective county and the remittance of the monies collected to the Fish and Game Fund.

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 (+/-): Revenues collected by the county court clerks will increase by approximately $5 million per year.

Expenditures (+/-): Expenditures will increase by an equal amount representing the monies being remitted to the department.

Other Explanation: No other explanations are necessary.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development

704 KAR 3:303. Required program of studies.

RELATES TO: KRS 156.070, 156.160, 158.6451, 160.290
STATUTORY AUTHORITY: KRS 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to establish courses of study for the different grades and kinds of common schools, such courses of study to comply with the expected outcomes for students and schools set forth in KRS 158.6451. KRS 156.070(1) gives the state board the management and control of the common schools and all programs operated in such schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the state board. In fulfilling and perpetuating such duties and intent, this regulation prescribes the document containing the general courses for use in Kentucky's common schools.

Section 1. Pursuant to the authority vested in the State Board for Elementary and Secondary Education by KRS 156.160, the "Program of Studies for Kentucky Schools, Grades K-12," as amended on July 11, 1990, is hereby promulgated and filed with the Legislative Research Commission and incorporated herein by reference. Such document may be inspected and copied at the Division of Curriculum Development, Department of Education, 17th Floor, Capital Plaza Tower, 8 a.m. - 4:30 p.m., Monday through Friday.

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

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 14, 1992 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 25, 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 June 20, 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. Betty Edwards
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year: No
2. Continuing costs or savings: No
3. Additional factors increasing or decreasing costs (note any effects upon competition): No
(b) Reporting and paperwork requirements: No
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No
2. Continuing costs or savings: No
3. Additional factors increasing or decreasing costs: No
(b) Reporting and paperwork requirements: No
(3) Assessment of anticipated effect on state and local revenues: No
(4) Assessment of alternative methods; reasons why alternatives

were rejected: No

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

(a) Necessity of proposed regulation if in conflict: No

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

(6) Any additional information or comments: This regulation will save time because preliminary work has not been completed for a movement away from a program of studies.

TIERING: Was tiering applied? No. This regulation applies to all school districts in the same manner.

EDUCATION AND HUMANITIES CABINET
Department of Education
Learning Support Services

704 KAR 3:440. Primary school program guidelines.

RELATES TO: KRS 156.160(1)(a)

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), 158.030(1)

NECESSITY AND FUNCTION: KRS 156.160(1)(a) requires the State Board for Elementary and Secondary Education to establish by regulation the standards that school districts shall meet in student, program service, and operational performance. KRS 158.030 establishes the primary school program and requires the promulgation of regulations to address methods for verifying successful completion of the primary school program.

Section 1. Definitions. Each elementary school shall design the primary school program to include the following seven (7) attributes: developmentally appropriate educational practices; multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The definitions of these attributes are:

(1) "Developmentally appropriate practices" means instructional practices that address the physical, aesthetic, cognitive, emotional and social domains of children and that permit them to progress through an integrated curriculum according to their unique learning needs.

(2) "Multiage and multiability classrooms" means flexible grouping and regrouping of children of different age, sex and ability who may be assigned to the same teacher(s) for more than one (1) year.

(3) "Continuous progress" means a student's unique progression through the primary school program at his own rate without comparison to the rate of others or consideration of the number of years in school. Retention and promotion with the primary school program are not compatible with continuous progress.

(4) "Authentic assessment" means assessment that occurs continually in the context of the learning environment and reflects actual learning experiences that can be documented through observation, anecdotal records, journals, logs, actual work samples, conferences and other methods.

(5) "Qualitative reporting methods" means progress is communicated through a variety of home-school communiques, which address the growth and development of the whole child as he progresses through the primary school program.

(6) "Professional teamwork" means all professional staff in the primary school program communicate and plan on a regular basis and use a variety of instructional delivery systems such as team teaching and collaborative teaching.

(7) "Positive parent involvement" means the establishment of productive relationships between the school and the home, individuals, or groups than enhance communication, promote understanding and increase opportunities for children to experience success in the primary school program.

Section 2. Students in the Primary School Program. (1) Children who attend the primary school program shall not be described as enrolled in a specific grade level. Students who transfer from a school system that uses grade levels of kindergarten through third grade shall be enrolled in the primary school program and placed according to their developmental needs.

(2) Each elementary school shall design the primary school program to address the learning needs of all children who meet the entry age for the primary school program and who are not ready to enter the fourth grade. Individual placement decisions for children who are eligible for special education and related services shall be determined by the appropriate admissions and release committee, pursuant to 707 KAR 1:051.

Section 3. Curriculum. (1) The curriculum of the primary school program shall address the goals of education and the model curriculum framework set forth in KRS 158.6451.

(2) Instructional practices in the primary school program shall motivate and nurture children of diverse cultures; shall address the social, emotional, physical, aesthetic and cognitive needs of children; and shall be based upon the following principles of how young children learn:

(a) Young children learn at different rates and through different styles.

(b) Young children learn as they develop a sense of self-confidence in a positive learning environment.

(c) Young children learn best with "hands on" experiences where they are encouraged to question, explore and discover.

(d) Young children learn best through an integrated curriculum by engaging in real-life activities and learning centers.

(e) Young children learn best in a social environment where they can converse with others to expand their language and their thinking.

(3) Students enrolled in the primary school program shall progress through the curriculum at their individual learning rates.

(4) Parents and legal guardians of children enrolled in the primary school program shall receive regular reports at a minimum of four (4) times per year regarding the children's individual progress in meeting the goals of education set forth in KRS 158.6451(1) and successful completion of the primary school program.

Section 4. Implementation. (1) By June 15, 1992, each elementary school shall submit an action plan to the Department of Education describing the steps to be taken for beginning implementation in 1992-93 and full implementation by 1993-94 in order to implement the primary school program as described in this regulation. The procedures and instructions for the plan are contained in "Procedures for Developing the Primary Program Action Plan," effective date of April 1992, which is hereby incorporated by reference. This document may be inspected, copied, and obtained at the Kentucky Department of Education, Division of Early Childhood, 21st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday - Friday, 8 a.m. - 4:30 p.m.

(2) Beginning June 1, 1993, each elementary school shall submit an annual evaluation report to the Department of Education describing the steps to be taken to improve the quality of the primary school program. The evaluation report shall follow the format contained in "Procedures for Developing the Primary Program Action Plan" document cited in subsection (1) of this section.

(3) The action plan and subsequent evaluation reports shall include input from parents, teachers and support staff of children enrolled in the primary school program. The action plan and subsequent evaluation reports shall be adopted by the school-based decision making council if one exists, or by the local district superintendent if the school does not have a council.

(4) Each elementary school shall make the action plan and subsequent evaluation reports available for public inspection. A copy of the action plan and subsequent evaluation reports shall be kept on file by the local school district superintendent.

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: May 12, 1992

FILED WITH LRC: May 14, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 25, 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 June 20, 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: Department of Education

(1) Type and number of entities affected: All elementary school children (K-3) in all 176 school districts.

(a) Direct and indirect costs or savings to those affected: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): Costs are not affected by this regulation; money per district will remain the same.

(b) Reporting and paperwork requirements: Each school must submit an action plan for primary program implementation 6-15-92. Each school must submit an annual evaluation report on primary program progress 6-1-93.

(2) Effects on the promulgating administrative body: No significant effect.

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation will be used to equally administer all primary school programs across the state.

EDUCATION AND HUMANITIES CABINET
Education Professional Standards Board

704 KAR 20:630. Repeal of 704 KAR 20:190.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: KRS 161.028 authorizes the Education Professional Standards Board to "establish standards and requirements for obtaining and maintaining a teaching certificate" and to "set standards ... for the preparation of teachers and other professional school personnel." This regulation provides for repealing the existing regulations regarding the qualifications for the position of rehabilitation counselor.

Section 1. 704 KAR 20:190, Rehabilitation counselors, is hereby repealed.

JANICE WEAVER, Chair

APPROVED BY AGENCY: April 20, 1992

FILED WITH LRC: April 21, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on June 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 June 19, 1992, five days prior 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. 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:

Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Approximately 5 applicants for Rehabilitation Counselor certification annually, and the Department of Vocational Rehabilitation.

(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: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Notification to the Cabinet for Workforce Development regarding the discontinuance of the certificate.

(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: A large majority of vocational rehabilitation counselors are employees of state government. Requirements for the positions are identified by the Department of Personnel.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Certification requirements are uniformly applicable to all individuals.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control

804 KAR 4:300. Repeal of 804 KAR 4:060.

RELATES TO: KRS 243.030, 243.300, 224.260

STATUTORY AUTHORITY: KRS 241.060

NECESSITY AND FUNCTION: 804 KAR 4:060 will no longer be required because fifty (50) ml. bottles of distilled spirits, "miniatures", have been approved for sale by wholesalers in the Commonwealth pursuant to House Bill 648, 1992 Session of the General Assembly.

Section 1. 804 KAR 4:060, Special miniature vendor, is hereby repealed.

DON W. STEPHENS, Commissioner

ED HOLMES, Secretary

APPROVED BY AGENCY: April 23, 1992

FILED WITH LRC: April 24, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on the above proposed regulation repeal will be held on Tuesday, June 23, 1992, at 9:30 a.m., EDT, in the Hearing Room of the Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky. Unless requests for a public hearing are received, in writing, five (5) working days before the hearing date, the public hearing will be cancelled. Those who may be interested in attending, please contact: Toni Sanderson, Secretary to the Board, Alcoholic Beverage Control Board, 123 Walnut, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Catherine C. Staib
(1) Type and number of entities affected: Three
(a) Direct and indirect costs or savings to those affected:
1. First year: $2/year/licensee.
2. Continuing costs or savings: $2/year/licensee.
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: $1.74
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: $6
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: License no longer necessary because of House Bill 648, 1992 General Assembly.
TIERING: Was tiering applied? Yes - only affects 3 licensees.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control

804 KAR 5:070. Minors.

RELATES TO: KRS 244.080, 244.085
STATUTORY AUTHORITY: KRS 241.060
NECESSITY AND FUNCTION: The named KRS Sections deal with the selling, giving away, or consumption of alcoholic beverages by minors on licensed premises. In furtherance of these statutes, this regulation sets out in detail prohibitions applicable to minors upon licensed premises.

Section 1. (1) Except as provided in KRS 244.087 and 244.090, a licensee, his agents, servants, or employees shall not permit any person under twenty-one (21) years of age to enter or remain on any premises on which alcoholic beverages are sold by the drink or consumed on the premises, unless the usual and customary business of the establishment is as a restaurant, grocery store, drug store, hotel, motel, private club, park, fair, church, school, athletic complex, or public exhibition at which live sports, athletic events, bona fide plays, or concerts are scheduled. A licensee, his agents, servants or employees shall not permit a person under twenty-one (21) years of age to enter or remain in the bar area or barroom of any establishment exempted under this section.
(2) For the purpose of this section:
(a) "Restaurant" means a business which receives at least thirty-five (35) percent of its gross food and alcoholic beverage sales receipts from the sale of food. Premises that qualify for the restaurant exemption shall only be exempted during those times of the day that meals are served to customers;
(b) "Bar area" means that portion of a room adjacent to the bar which is visibly separated and delineated by a physical barrier from the remainder of the room.

Section 2. Unless an establishment is exempted under the provisions of Section 1 of this regulation, every retail licensee that sells alcoholic beverages by the drink for consumption on the premises shall display at all times, in a prominent place, a printed card at least eight (8) inches by eleven (11) inches in size which shall read, in thirty (30) point or larger type, substantially as follows:

PERSONS UNDER 21 MAY NOT ENTER OR REMAIN
ON THIS PREMISES.

DON W. STEPHENS, Commissioner
ED HOLMES, Secretary

APPROVED BY AGENCY: April 22, 1992
FILED WITH LRC: April 24, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on the above proposed regulation will be held on Tuesday, June 23, 1992, at 9 a.m., EDT, in the Hearing Room of the Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky. Unless requests for a public hearing are received, in writing, five (5) working days before the hearing date, the public hearing will be cancelled. Those who may be interested in attending, please contact: Toni Sanderson, Secretary to the Board, Alcoholic Beverage Control Board, 123 Walnut, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Catherine C. Staib
(1) Type and number of entities affected: 250
(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: No alternative methods.
(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? Is applied because all licensees are not included.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing

815 KAR 20:078. Storage and installation of SDR 11, CPVC plastic pipe and fittings.

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 relates to the method needed for storage, handling and installation of standard dimension ratio (SDR) 11, chlorinated poly(vinyl chloride) (CPVC) plastic pipe and fittings.

Section 1. Storage and Handling. (1) Chlorinated poly(vinyl chloride) (CPVC) pipe, tubing and fittings shall be stored under cover to avoid unnecessary dirt accumulation and long-term exposure to sunlight. Pipe and tubing shall be stored with continuous support in straight, uncrossed bundles. Care shall be used in handling to avoid unnecessary abuse such as abrasion on concrete or crushing.
(2) Solvent cement and primers, because of flammability, shall be stored in an area where there shall be no exposure to ignition, sparks, open flames or heat. Solvent cement and primers shall not be used beyond their marked shelf life.

Section 2. Installation. (1) Correct assembly shall consist of the following steps:
(a) Cut the pipe square;
(b) Remove burrs;
(c) Clean both pipe end and fitting socket with a recommended CPVC cleaner;
(d) Apply a liberal coat of CPVC solvent cement to the pipe and

apply a light coat of cement to the fitting socket; removing all excess cement from the interior which may clog the waterway;

(e) Assemble immediately by bottoming the pipe in the socket and rotating one-quarter (1/4) turn as the joint is assembled; and

(f) Remove excess cement from the joint.

(2) To determine if a joint has been properly assembled, a small bead of cement shall appear at the junction between the pipe or tubing and the fitting.

Section 3. Installation Temperature. Extra care shall be taken if installing in temperatures below forty (40) degrees Fahrenheit or above 110 degrees Fahrenheit. The manufacturer's installation instructions shall be followed carefully.

Section 4. Hangers and Supports. Support shall be provided at each floor level for piping installed in vertical runs. For horizontal runs, support shall be provided at three (3) foot intervals for pipe one (1) inch or less in diameter and at four (4) foot intervals for larger pipe sizes. Piping shall not be anchored tightly to a support but secured with smooth straps or hangers allowing for movement caused by expansion and contraction. Hangers shall not have rough or sharp edges come in contact with the piping.

Section 5. CPVC-to-metal Transitions. Assembly shall be in accordance with the manufacturer's instructions. Union and compression type transition fittings may include ferrules or o-rings, or both, which form an essential part of the fitting assembly and shall not be omitted. Plastic socket-to-male threaded adapters shall be installed with a manufacturer's recommended thread sealant.

Section 6. Thermal Expansion. The linear thermal expansion rate for CPVC is approximately one-half (1/2) inch for each ten (10) degrees Fahrenheit temperature change for each 100 feet of pipe or tubing. When installing long runs of pipe, allow one-sixteenth (1/16) to three thirty-seconds (3/32) inch longitudinal clearance per foot of run to accommodate thermal expansion. Proper design includes offsets of twelve (12) inches or more every ten (10) feet on vertical risers if they are restrained by horizontal branches at each floor. Piping shall not be anchored tightly to a support but secured with broad, smooth hangers allowing for any movement caused by expansion and contraction.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: April 27, 1992
FILED WITH LRC: May 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 23, 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 June 18, 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: Cost of printing updated pages to code which is recouped by sale of code books.

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: No alternative method; State Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by both bodies.

(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 applied in the sense that this regulation only governs one specific category of plastic pipe.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

906 KAR 1:110. Rural primary-care hospital services.

RELATES TO: HB 310, 1992 GA
STATUTORY AUTHORITY: HB 310, 1992 GA, §3(11)
NECESSITY AND FUNCTION: HB 310 of the 1992 GA mandates that the Cabinet for Human Resources promulgate regulations necessary to implement a licensure program for rural primary-care hospitals. This regulation sets forth quality of care and licensure standards for rural primary-care hospitals.

Section 1. Special Provisions. (1) The rural primary-care hospital (RPCH) shall be licensed in accordance with 902 KAR 20:008.

(2) The RPCH shall submit a licensure application, strategic plan, and proposed range of services to the Kentucky Board of Family Health Care (KBFHC).

(3) The KBFHC shall approve the RPCH's application, plan, and services prior to licensure by the cabinet.

(4) The RPCH shall comply with the provisions of its approved submissions to the KBFHC.

(5) A licensed acute-care hospital shall have been found to be in compliance with 902 KAR 20:009 on its last licensure survey prior to licensure as a RPCH.

Section 2. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the RPCH and for compliance with federal, state, and local laws and regulations pertaining to the operation of the RPCH.

(2) The RPCH shall be under the medical direction of a physician licensed to practice medicine in Kentucky.

(3) The licensee shall establish written policies, lines of authority, and designate the person who will be principally responsible for the daily operation of the RPCH.

(4) The licensee shall develop patient care policies with the advice of a group of professional personnel that include one (1) or more physicians. At least one (1) member of the group shall not be a member of the RPCH staff. The policies include:

(a) A description of the services the RPCH provides directly and those provided through agreement;

(b) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the service(s);

(c) Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or

patient referral, and the maintenance of health records;

(d) Procedures to be followed in the storage, handling, and administration of drugs and biologicals; and

(e) Procedures for annual review and evaluation of the services provided by the RPCH.

(5) The RPCH shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

(a) Is informed of these rights and of all rules and regulations governing patient conduct and responsibilities, including a procedure for handling patient grievances;

(b) Is informed of services available at the RPCH and of related charges including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements;

(c) Is informed of his medical condition, unless medically contraindicated (as documented in his medical record), and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

(d) Is encouraged and assisted to understand and exercise his patient rights; to this end he may voice grievances and recommend changes in policies and services. Upon the patient's request, the grievances and recommendations will be conveyed within a reasonable time to an appropriate decision-making level with the organization which has authority to take corrective action;

(e) Is assured confidential treatment of his records and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by Kentucky law or third-party payment contract; and

(f) Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in the care of his personal health needs.

(6) Personnel.

(a) The RPCH shall have a staff that includes at least one (1) physician who shall be on call and available to the RPCH within one-half (1/2) hour. The RPCH shall employ such other staff essential to the RPCH's operation.

(b) A physician shall:

1. Be responsible for all medical aspects of the RPCH and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;

2. In conjunction with other medical personnel, participate in developing, executing, and periodically reviewing the RPCH's written policies and services;

3. Periodically review the RPCH's patient records, provide medical orders, and provide medical care services to patients of the RPCH's.

(7) Transfer and linkage agreements.

(a) The RPCH shall have linkage agreements or arrangements with each of the following for:

1. Secondary and tertiary hospital services;

2. Additional and specialized diagnostic and laboratory services that are not available at the RPCH;

3. Home health agency services;

4. Nursing facility services if not provided on site;

5. Emergency medical services; and

6. Pharmacy services.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for appropriate referral and acceptance of patients from the RPCH, provisions for appropriate coordination of discharge planning with RPCH staff, and provisions for the RPCH to receive a copy of the discharge summary and, as necessary, for the medical record for each patient referred to the RPCH.

(c) The written transfer agreements shall include designation of:

1. Responsibility for transfer of information;

2. Responsibility for provisions of transportation;

3. Responsibility for sharing of services, equipment, and personnel; and

4. Responsibility for provision of total care or portions thereof in relation to facility and agency capability.

(8) Medical records.

(a) The RPCH shall maintain medical records identifying all family members (a single patient may be considered a family unit). Medical records shall contain at least the following:

1. Medical and social history, including data obtainable from other providers;

2. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all individual patient records shall be maintained at all times.

(c) Transfer of records. The RPCH shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the RPCH shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(9) Utilization review and medical audit. In order to determine the appropriateness of the service(s) delivered, there shall be a written plan for utilization review developed by the RPCH which specifies the frequency of reviews and composition of the body conducting the review.

(10) Quality assurance program. The RPCH shall have a written quality assurance program designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating patient care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the licensee and shall:

(a) Assign responsibility for the monitoring and evaluation activities;

(b) Delineate scope of care provided by the RPCH;

(c) Identify the aspects of care that the RPCH provides;

(d) Identify indicators, and appropriate clinical criteria that can be used to monitor these aspects of care;

(e) Collect and organize data for each indicator;

(f) Evaluate the care in order to identify problems or opportunities to improve care;

(g) Take actions to correct identified problems or to improve care;

(h) Assess the effectiveness of the actions taken and document the improvement in care; and

(i) Communicate relevant information to other individuals, departments, or services as to the quality assurance program.

(11) Contracted services. The RPCH shall be responsible for assuring that any services provided under contract shall be in compliance with applicable local, state, and federal regulations and statutes.

Section 3. Provision of Services. (1) The RPCH staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

(2) The RPCH staff shall provide, either directly or through contract, basic laboratory services essential to the immediate diagnosis and treatment of the patient on a twenty-four (24) hour basis and in compliance with KRS Chapter 333, including:

(a) Chemical examinations of urine by stick or tablet methods or both (including urine ketones);

(b) Microscopic examinations of urine sediment;

(c) Hemoglobin or hematocrit;

(d) Blood sugar;

(e) Gram stain;

(f) Examination of stool specimens for occult blood;

(g) Pregnancy tests;

(h) Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and

(i) Test for pinworms.

(3) The RPCH shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in life-saving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

(a) Emergency room care shall be provided on a twenty-four (24)

hour basis.

(b) Examination services shall be provided by the RPCH in accordance with 902 KAR 20:012.

(c) At least one (1) person shall be on duty at the RPCH who is minimally certified as a provider by the American Heart Association in advanced cardiac life support and certified as a basic trauma life support provider-advanced in accordance with the American College of Emergency Physicians curriculum.

(4) Supplemental services. A RPCH may provide additional services to complement the basic services of the RPCH. Additional services shall be identified and submitted to the KBFHC for approval prior to delivery of services. A RPCH may contract with another provider to deliver supplemental services. Supplemental services may include:

(a) Surgical services as approved by the KBFHC;

(b) Obstetrics as approved by the KBFHC;

(c) Primary care in accordance with 902 KAR 20:058;

(d) Adult day health care in accordance with 902 KAR 20:066;

(e) Respite care; or

(f) Rehabilitative and therapeutic services in accordance with 902 KAR 20:016, Section 4(7).

(5) Dietary services shall be provided either directly or by contract in accordance with 902 KAR 20:016, Section 4(3), when an inpatient resides in the RPCH for more than twelve (12) hours.

(6) Long-term care beds, if provided, shall be in accordance with applicable state and federal regulations as follows:

(a) Dual licensure beds shall be in compliance with 902 KAR 20:220;

(b) Swing beds shall be in compliance with 42 CFR 405; and

(c) Nursing facility beds shall be in compliance with 902 KAR 20:300 and 42 CFR 483.

Section 4. Physical and Sanitary Environment. The RPCH shall comply with the provisions of 902 KAR 20:016, Section 3(10).

WILLIAM M. GARDNER, Inspector General
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: May 12, 1992

FILED WITH LRC: May 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 23, 1992, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 18, 1992, of their desire to appear and testify at the hearing: Masten Childers II, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau/David Crane

(1) Type and number of entities affected: 24

(a) Direct and indirect costs or savings to those affected: Unknown at this time due to uncertainty concerning federal participation.

1. First year: Unknown

2. Continuing costs or savings: Unknown

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

(b) Reporting and paperwork requirements: Since these facilities already exist and are responsible for compliance with 902 KAR 20:016, paperwork and reporting requirements should remain constant.

(2) Effects on the promulgating administrative body: Minimal effect. Facilities affected already are surveyed, so this should not impose any additional workload.

(a) Direct and indirect costs or savings: Minimal

1. First year: $500 for reprinting regulation.

2. Continuing costs or savings: The cost of reprinting regulations is built into the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors exist.

(b) Reporting and paperwork requirements: Minimal increase due to new regulation.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: HB 310 mandated that the Cabinet for Human Resources issue regulations.

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

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: No additional comments.

TIERING: Was tiering applied? No. This regulation is written to set forth provisions of HB 310 which provides this special licensure category for rural primary-care hospitals. This bill provides tiering for hospitals.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the May 5 and 6, 1992 Meeting

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 5, 1992 at 2 p.m. and Wednesday, May 6, 1992 at 10 a.m. in Room 131 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the April 1, 1992 meeting were approved.

Present were:

Members: May 5, 1992: Representative Tom Kerr, Chairman; Senators Gene Huff and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates. May 6, 1992: Representative Tom Kerr, Chairman; Senators Gene Huff and Bill Quinlan; Representatives Jim Bruce, Woody Allen and James Yates.

Guests: Sandra Godbey, Greg Holmes, Board of Claims; John Todd Manuel, Kentucky Agricultural Finance Corporation; Susan Stopher, Board of Accountancy; Buddy R. Salyer, Board of Registration of Professional Engineers; John E. Hornback, Kenneth Hines, Hank Wiseman, Millie Ellis, Marjorie Mullen, H. D. Uriel Smith, Division for Air Quality; Lori Poole, Jack Damron, Tom Campbell, Corrections Cabinet; Kevin Noland, George Clark, Stewart Michael Roscoe, Perry Watson, Department of Education; Delmus Murrell, Workforce Development Cabinet; Charles E. McCoy, Labor Cabinet; Claude G. Rhorer, Jr., Susan Scott, Eddie B. Smith, Public Service Commission; Judith G. Walden, Department of Housing, Buildings and Construction; Marcia Burklow, Gary Bevill, Guy Delius, Dudley J. Conner, Cookie Whitehouse, Anne Hager, Michael Cheek, Diana Gaetz, Joyce Young, Barbara Coleman, Cabinet for Human Resources; Greg Brotzge, Kentucky Society of Architects; John Hinkle, Kentucky Restaurant Association; Ron Pryor, Kentucky Farm Bureau; Jacquelyn R. Johnson, Law Office of Stoll, Keenon & Park; John F. Nichols, Jr., Associated Industries of Kentucky.

LRC Staff: Joe Hood, Greg Karambellas, Tom Troth, Patrice Carroll, Susan Wunderlich, Donna Pierce, Peggy Jones, Susan Eastman.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Board of Claims: Practice and Procedure

108 KAR 1:040 (Payment of awards, proof of payment required.) This administrative regulation was amended to comply with the requirements of KRS Chapter 13A governing terminology.

Finance and Administration: Kentucky Agricultural Finance Corporation

200 KAR 18:020 & E (Guidelines for operating loan program.) This administrative regulation was amended to conform to the requirements of KRS Chapter 13A with regard to the citation of applicable statutes, definitions, and to clarify that the loan program established applied only to existing farmers who meet the requirements established in KRS 247.942(2)(b). It was pointed out that KRS 247.942(2)(a) also applied to first-time farmers who choose to participate in the land loan program, and that the agency had agreed that it was required to promulgate an administrative regulation governing first-time farmers.

In response to a question by Representative Allen as to the amount of money that was available for operating the loan program, agency personnel stated that the 1990 appropriation was $500,000; $20,000 of the appropriation was utilized to implement the program; the remaining $480,000 has been dispersed to six banks. Representative Allen stated that $80,000 per bank was not much money, in some cases even for one farmer. Agency personnel stated that the loan grant limit had been set at $50,000, per loan, per farmer, and that only two loans had been approved. Representative Allen asked what the cost was to administer the loan program. Agency personnel replied that the Office of Financial Management and Economic Analysis paid the administrative cost of the program.

General Government Cabinet: Board of Accountancy

The following two administrative regulations were amended at the Subcommittee meeting to insert the effective of material incorporated by reference that had been inadvertently omitted in the initial filing.

201 KAR 1:065 (Individual and firm permit fees.)

201 KAR 1:130 (Examination application procedure.)

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:131)Disciplinary and grievance hearing procedures.) Chairman Kerr stated that KRS 322.190 provided for the issuance of written charges by the Board and did not authorize the "formal" or "informal complaints" established by Section 4 of this administrative regulation. Board personnel stated that the intention was to cover oral complaints received by the Board. At the request of Chairman Kerr, Subcommittee staff explained that the terminology and procedure established by KRS Chapter 322 must be followed, and that deleting "formal and informal complaints" would not preclude the Board considering complaints that were not written. Chairman Kerr questioned the use of court forms. He stated that, generally, procedures before an administrative body were less formal than court procedures, and that the Board should develop its own forms. It was pointed out that such forms should either be set out in the administrative regulation or incorporated by reference.

Chairman Kerr stated that Section 5 granted the executive director the authority to dismiss a charge as unfounded or trivial. He pointed out that KRS 322.200 granted the Board that authority. Board personnel stated that a Board committee would review a complaint and determine whether it was unfounded or trivial. It was pointed out that KRS Chapter 322 did not authorize any administrative body or committee to make this determination. Board personnel stated that the Board received a great number of frivolous charges. Board personnel gave as an example a charge that a surveyor was under the control of satan. It was pointed out that, however trivial or burdensome such charges were, KRS Chapter 322 did not provide an exemption to the Board's responsibility, or authorize a delegation of its authority by the Board, on the grounds that a charge was frivolous. In addition, it was pointed out that delegation of Board responsibility could be accomplished only by an amendment to the statutes.

This administrative regulation was amended to conform to the drafting requirements of KRS Chapter 13A relating to terminology, format and language. Chairman Kerr stated that these amendments were accepted with the understanding that the issues raised with regard to Sections 4 and 5 would be discussed by Subcommittee and Board staff, and that the Board would file amended regulations after its discussion with Subcommittee staff.

Natural Resources and Environmental Protection Cabinet: Division for Air Quality: General Administrative Procedures

With regard to the following Air Quality administrative regulations, it was pointed out that Subcommittee staff will conduct a review of existing administrative regulations with the agency in order to recommend amendments needed to comply with the requirements of KRS Chapter 13A, including the improper application of definitions to one KAR chapter; the breakdown of administrative regulations to govern no more than one topic; questions relating to materials incorporated by reference, the citation of federal regulations; and the deletion of substantive material from definitions sections and insertion of such material in the body of administrative regulations. It is expected that this review will be conducted throughout the interim, with periodic reports to the Subcommittee.

These administrative regulations were amended to comply with KRS 13A.2261, 13A.2264, and 13A.2267, requiring the citation of applicable federal statutes or regulations.

401 KAR 50:010 (Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.)

401 KAR 50:012 (General applications.)

401 KAR 50:047 (Test procedures for capture efficiency.) This administrative regulation contained the Capture Efficiency Protocol mandated by U.S. EPA. In a memorandum from the U.S. EPA, March 20, 1992, the federal agency no longer required this Protocol, and permitted states to approve alternative protocols until it adopted another protocol. This administrative regulation was amended to delete the U.S. EPA Capture Efficiency Protocol and to provide that the state agency would accept a capture efficiency protocol proposed by a regulated entity if it accurately measured the capture efficiency.

In this amendment, the agency included a provision that it would not approve a capture efficiency protocol that violates a protocol mandated by the U.S. EPA. It was pointed out that when the U.S. EPA required a specific capture efficiency protocol, the agency would amend this administrative regulation to specifically include and impose the U.S. EPA protocol, and that the U.S.EPA protocol could not be imposed without such an amendment.

New Source Requirements; Nonattainment Areas

401 KAR 51:001 (Definitions and abbreviations of terms used in Title 401, Chapter 51.)

New Source Standards

401 KAR 59:001 (Definitions and abbreviations of terms used in Title 401, Chapter 59.)

401 KAR 59:185 (New solvent metal cleaning equipment.)

401 KAR 59:190 (New insulation of magnet wire operations.)

401 KAR 59:210 (New fabric, vinyl and paper surface coating operations.)

401 KAR 59:212 (New graphic arts facilities using rotogravure and flexography.)

401 KAR 59:214 (New factory surface coating operations of flat wood paneling.)

401 KAR 59:225 (New miscellaneous metal parts and products surface coating operations.) After the Statement of Consideration was filed by the agency, the U.S. EPA required that the 6.9 inch adhesive standard established in this administrative regulation be altered to a 5.1 inch adhesive standard. This administrative regulation was amended so to alter the adhesive standard.

401 KAR 59:230 (New synthesized pharmaceutical product manufacturing operations.)

401 KAR 59:240 (New perchloroethylene dry cleaning systems.)

401 KAR 59:315 (Specific new sources.)

Existing Source Standards

401 KAR 61:001 (Definitions and abbreviations of terms used in Title 401, Chapter 61.)

401 KAR 61:050 (Existing storage vessels for petroleum liquids.) In response to questions from Representative Bruce, the agency stated that this administrative regulation did not apply to storage vessels located on a farm and used for storing petroleum liquids used by the farm. Agency personnel added that this administrative regulation, as well as the other air quality administrative regulations considered by the Subcommittee, would require that sources not previously regulated comply with these air quality administrative regulations. Representative Bruce stated that the costs to newly regulated entities could be substantial.

401 KAR 61:090 (Existing automobiles and light-duty truck surface coating operations.) Agency personnel stated that, after the Statement of Consideration had been filed, the U.S. EPA required that an alternate standard for coating operations be included in this administrative regulation. The Subcommittee and agency agreed to an amendment to this effect.

401 KAR 61:095 (Existing solvent metal cleaning equipment.)

401 KAR 61:100 (Existing insulation of magnet wire operations.)

401 KAR 61:105 (Existing metal furniture surface coating operations.)

401 KAR 61:110 (Existing large appliance surface coating operations.)

401 KAR 61:120 (Existing fabric, vinyl and paper surface coating operations.)

401 KAR 61:122 (Existing graphic arts facilities using rotogravure and flexography.)

401 KAR 61:124 (Existing factory surface coating operations of flat wood paneling.)

401 KAR 61:125 (Existing can surface coating operations.)

401 KAR 61:130 (Existing coil surface coating operations.)

401 KAR 61:132 (Existing miscellaneous metal parts and products surface coating operations.) After the Statement of Consideration was filed by the agency, the U.S. EPA required that the 6.9 inch adhesive standard established in this administrative regulation be altered to a 5.1 inch adhesive standard. This administrative regulation was amended so to alter the adhesive standard.

401 KAR 61:137 (Leaks from existing petroleum refinery equipment.)

401 KAR 61:150 (Existing synthesized pharmaceutical product manufacturing operations.)

401 KAR 61:155 (Existing pneumatic rubber tire manufacturing plants.)

401 KAR 61:160 (Existing perchloroethylene dry cleaning systems.)

401 KAR 61:175 (Leaks from existing synthetic organic chemical and polymer manufacturing equipment.)

General Standards of Performance

401 KAR 63:001 (Definitions and abbreviations of terms used in Title 401, Chapter 63.)

401 KAR 63:025 (Asphalt paving operations.)

Corrections Cabinet: Office of the Secretary

501 KAR 6:150 (Eastern Kentucky Correctional Complex.) This regulation was amended by the agency to conform to several suggested changes contained in the initial staff review. While most of the amendments were to conform to the draft requirements of KRS Chapter 13A, EKCC 01-06-01 was amended to conform to KRS 72.020, which requires the coroner to take charge of evidence when there is a death, and concerning moving a body prior to the coroner's authorization.

Education and Humanities Cabinet: Department of Education: Pupil Transportation

702 KAR 5:010 (Responsibilities of division.) Section 8 of this regulation was amended to delete the word "certification" and to insert the word "approval" in lieu thereof. Chairman Kerr stated that the use of the word "certificate" or "certification" could create some problems in relation to other education statute requirements, and suggested that the agency use another term. Kevin Nolan, Counsel for the Department, agreed.

702 KAR 5:030 (Superintendents' responsibilities.) The Subcommittee members and Kevin Nolan agreed that the terms "certified", "certificate", and "certification" as used throughout this regulation in relation to a state school bus inspector, should be deleted and replaced with the words "approved" or "approval". A new Section 8 was also added in order to incorporate by reference the "Pupil Transportation Management Manual". This manual sets out the requirements for becoming a state-approved inspector.

Labor Cabinet: Labor standards; Wages and Hours

803 KAR 1:063 (Trading time.) The regulation was amended to include the proper citation of federal statute as required by KRS Chapter 13A, by inserting "45 USC 181" to identify Title II of the Railway Labor Act.

Public Protection and Regulation Cabinet: Public Service Commission: Utilities

807 KAR 5:066 (Water.) This administrative regulation had been deferred since the February 1992 Subcommittee meeting in order to resolve issues raised relating to the regulation of fire hydrants. These issues related to the size of water mains; whether fire hydrants should be identified in a manner that would readily indicate to the public that it was a fire hydrant and not a flushing device; the use of certain hydrants as flushing devices, to fill booster tanker trucks, or as fire hydrants; the lack of standards by which adequate and reliable fire flows could be determined by the agency; and the required residual pressure for the entire distribution system. In response to a question by Chairman Kerr, Subcommittee staff stated that: (1) the amendment agreed to by the agency and the Rural Water District Association did not specify water main size or that the residual pressure established in the amendment did not have to be maintained throughout the system; (2) the definition of fire hydrant that would have required fire hydrants to be distinguishable from other hydrants was deleted; and (3) that the agency, the Association, and representatives from ISO that established applicable standards had stated that the amendment established the minimum fire flow requirements necessary for fire protection. The amendment was agreed to by the agency and the Subcommittee.

Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:025 (Kentucky Building Code.) Section 1 of this regulation was amended to correct typographical errors as follows: change the phrase "as it is set forth" to "as if set forth", and to change the reference of Sections 2 through 33 to Sections 2 through 34; and was renumbered as Section 2. Section 2, Definitions, was renumbered as Section 1 to include the definitions in the first section of the regulation as required by KRS Chapter 13A.

Cabinet for Human Resources: Department for Health Services: Emergency Medical Technicians

902 KAR 13:050 (Training, examination, certification and recertification.) This administrative regulation was amended to: (1) clarify certification examination requirements, in particular those relating to practical and challenge examinations; (2) correct statutory citations; (3) delete language permitting master grade sheets, applications, and other critical documents to be sent by facsimile; and (4) insert language recognizing instructors' certification by the National Safety Council for the teaching of CPR for recertification.

Food and Cosmetics

902 KAR 45:005 (Retail food code.) This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222 relating to language and format requirements. Chairman Kerr asked whether there were requirements for food handlers to cover hands while preparing food. He stated that the use of outward swinging doors in restrooms could prevent the type of fecal contamination of doorknobs that resulted in an outbreak of hepatitis in a Northern Kentucky facility. Agency personnel stated that they had no such requirements but that the Building Code may be the proper authority for such requirements. Representative Allen stated that the addition of other requirements could result in burdensome expenses on the food industry. He added that enforcement would be impossible, short of hiring staff to monitor facility restrooms, and that the refusal of consumers to patronize unsanitary establishments would accomplish the same end.

Department for Social Insurance: Public Assistance

904 KAR 2:006 (Technical requirements; AFDC.) Subcommittee staff stated that: (1) the federal agency had issued an interpretive guideline to expand the definition of "specified relative"; (2) the agency had been notified that KRS Chapter 13A required the state administrative regulation to be amended to include the requirements of the federal interpretive guidelines; (3) the requirements found in the interpretive guidelines could not be imposed by the state agency until they were contained in a state administrative regulation; (4) the state administrative regulation is required to cite the number of the interpretive guideline. The Subcommittee and agency agreed to an amendment citing the interpretive guideline. Subcommittee staff will research whether interpretive guidelines are reflected in an amendment to federal regulations and the specific statute, if any, granting the federal agency authority to impose new requirements through interpretive guidelines if it is determined that an amendment of the federal regulation is not required.

Department for Social Services: Community Action Agencies

The following two administrative regulations were amended to comply with the requirements of KRS Chapter 13A governing terminology and with the requirement of KRS 13A.2251(1)(c) that an administrative regulation incorporating material by reference include a notice that it may be obtained, copied, or inspected at the offices of the administrative body.

905 KAR 6:060 (CSBG audit specifications.)

905 KAR 6:070 (Program state plan for CSBG.)

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

General Government Cabinet: Board of Accountancy

These administrative regulations were amended to conform to the drafting requirements of KRS Chapter 13A, including format, definitions, forms, terminology, citations of authority, and inclusion of specific requirements for licensure, examination and other matters.

201 KAR 1:001 (Repeal of 201 KAR 1:005; 201 KAR 1:010; 201 KAR 1:025; 201 KAR 1:030; 201 KAR 1:035; 201 KAR 1:055; 201 KAR 1:070; and 201 KAR 1:075.)

201 KAR 1:015 (Meetings.)

201 KAR 1:020 (Members of board.)

201 KAR 1:040 (Procedures for conducting examination.)

201 KAR 1:045 (Examination subjects, grading and reexamination.)

201 KAR 1:050 (Certificate application.)

201 KAR 1:080 (Firm registrations.)

201 KAR 1:140 (Procedures for the reinstatement of a certificate and permit to practice public accounting.)

201 KAR 1:150 (To set forth practice and procedures for hearings held before the Kentucky State Board of Accountancy.)

Natural Resources and Environmental Protection Cabinet: Division for Air Quality: New Source Requirements; Nonattainment Areas

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

Corrections Cabinet: Office of the Secretary

501 KAR 6:030 (Kentucky State Reformatory.)

Workforce Development Cabinet: Department for Adult and Technical Education: Management of the Kentucky Tech System

780 KAR 2:070 (Veterans' preference procedure.)

780 KAR 2:150 (Kentucky tech regional business and industry council.)

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:030 (License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.) Representative Bruce stated that there were fee increases in this regulation that appeared to be excessive. Chairman Kerr stated that the fee increases were: (1) $50 increase for master plumber applications, (2) $25 increase for journeymen applications, (3) $100 increase annually for master plumbers to renew their licenses, and (4) $10 increase annually for journeyman to renew their licenses. Judy Walden, Counsel to the Department, stated these fees were provided for specifically in the 1992 Budget Memorandum. Representative Allen stated that this was no time to be raising fees that result in increases in the cost of building a house. He then moved that this regulation be found deficient for exceeding statutory authority, and Representative Bruce seconded the motion. Upon roll call vote, the motion failed. Representative Allen requested that his objection to this regulation be noted in the record. Chairman Kerr asked Subcommittee staff to research the budget memorandum to determine whether the fees were specified and the requirements of KRS Chapter 13A relating to duplication of items appearing in a budget bill and related documentation.

815 KAR 20:050 (Installation permits.) This regulation raises permit fees from $15 to $23. Discussion was centered on the use of the money derived from this increase. Judy Walden stated that this money was needed to make up for a deficient of money received due to less permits being issued. She stated that inspectors served a set area and needed to be there regardless of how many permits were issued. Representative Allen requested that his objection to this regulation be noted in the record.

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11:10 a.m. until June 2, 1992 at 2 p.m. in Room 131 of the Capitol Annex.

AMENDMENTS & OTHER RELEVANT MATERIAL PERTAINING TO REGULATIONS REVIEWED AT THIS MEETING ARE ATTACHED TO THE APPROPRIATE REGULATIONS. REGULATIONS AND ATTACHMENTS THERETO ARE SUBMITTED WITH THIS REPORT TO BE REFERRED TO THE APPROPRIATE JURISDICTIONAL COMMITTEE.

ADMINISTRATIVE REGISTER - L1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates L2

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LOCATOR INDEX - EFFECTIVE DATES

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

VOLUME 17

Emergency Regulation	17 Ky.R Page No.	Effective Date
200 KAR 17:030E	3085	4-15-91
Replaced		8-22-91
200 KAR 17:040E	3088	4-15-91
Replaced		8-22-91
200 KAR 17:050E	3090	4-15-91
Replaced		8-22-91
415 KAR 1:010E	3356	4-25-91
Replaced		9-25-91
415 KAR 1:020E	3357	4-25-91
Replaced		9-25-91
415 KAR 1:030E	3358	4-25-91
Replaced		9-25-91
900 KAR 4:010E	3360	4-16-91
Replaced		10-6-91
902 KAR 20:290E	3363	5-7-91
Replaced	3538	8-21-91

Regulation	17 Ky.R Page No.	Effective Date
201 KAR 16:010		
Amended	3494	
Withdrawn		11-27-91
415 KAR 1:010	3592	(See 18 Ky.R.)
415 KAR 1:020	3594	(See 18 Ky.R.)
415 KAR 1:030	3597	(See 18 Ky.R.)
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
11 KAR 5:001E	3301	5-8-92
11 KAR 5:033E	3302	5-8-92
11 KAR 5:034E	3303	5-8-92
11 KAR 5:140E	3303	5-8-92
11 KAR 5:145E	3305	5-8-92
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
101 KAR 2:036E	3305	5-15-92
101 KAR 2:046E	3307	5-15-92
101 KAR 2:056E	3309	5-15-92
101 KAR 2:066E	3309	5-15-92
101 KAR 2:076E	3310	5-15-92
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
200 KAR 18:020E	2915	3-6-92
201 KAR 18:040E	3310	4-27-92
201 KAR 18:131E	2768	1-21-92
301 KAR 1:085E	2520	1-3-92
Replaced	2350	4-14-92
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
302 KAR 16:080E	3130	4/7/92
405 KAR 7:001E	2108	11-27-91
Replaced	2834	4-3-92
405 KAR 7:021E	2112	11-27-91
Replaced	2458	4-3-92
405 KAR 8:001E	2112	11-27-91
Replaced	2837	4-3-92
405 KAR 8:010E	1798	11-1-91
Replaced	2774	4-3-92
405 KAR 8:030E		
Resubmitted	3135	3-18-92
405 KAR 8:040E		
Resubmitted	3145	3-18-92
405 KAR 10:001E	2119	11-27-91
Replaced	2842	4-3-92
405 KAR 12:001E	2122	11-27-91
Replaced	2472	4-3-92

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405 KAR 16:001E	2124	11-27-91
Replaced	2844	4-3-92
405 KAR 16:180E		
Resubmitted	3158	3-18-92
405 KAR 18:001E	2130	11-27-91
Replaced	2849	4-3-92
405 KAR 18:180E		
Resubmitted	3160	3-18-92
405 KAR 20:001E	2136	11-27-91
Replaced	2853	4-3-92
405 KAR 24:001E	2140	11-27-91
Replaced	2495	4-3-92
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
Replaced	1927	2-7-92
501 KAR 6:150E	1814	10-16-91
Replaced	1405	1-10-92
Resubmitted	3162	3-30-92
601 KAR 1:190E	2770	2-11-92
Replaced	2902	5-1-92
601 KAR 11:040E	3311	4-22-92
601 KAR 12:060E	621	7-26-91
Replaced	1007	10-1-91
601 KAR 40:020E	2770	2-4-92
701 KAR 5:050E	2772	1-21-92
Replaced	2920	4-3-92
701 KAR 5:090E	10	5-29-91
Replaced	217	9-6-91
702 KAR 1:001E	259	7-11-91
Replaced	569	10-6-91
702 KAR 3:220E	1293	9-18-91
Replaced	476	11-8-91
704 KAR 3:006E	260	7-11-91
Replaced	1340	11-8-91
704 KAR 20:580E	263	6-17-91
Replaced	75	8-2-91
804 KAR 9:040E	3313	4-24-92
806 KAR 17:066E	2144	12-6-91
Replaced	2787	3-7-92
810 KAR 1:024E	3313	4-16-92
810 KAR 1:025E	3315	4-16-92
810 KAR 1:026E	3317	4-16-92
810 KAR 1:027E	3319	4-16-92
810 KAR 1:028E	3321	4-16-92
810 KAR 1:029E	3322	4-16-92
900 KAR 2:050E	1816	10-16-91
Replaced	2823	3-7-92
900 KAR 2:060E	1818	10-16-91
Replaced	2824	3-7-92
902 KAR 20:006E	985	8-22-91
Replaced	1347	1-10-92
902 KAR 22:010E	2185	12-9-91
Replaced	2856	3-26-92
902 KAR 22:030E	2186	12-9-91
Replaced	2921	3-26-92
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
Replaced	2441	3-7-92
904 KAR 2:016E	1298	9-24-91
Replaced	1245	11-25-91
Resubmitted	3164	3-31-92
904 KAR 2:110E	1308	9-24-91
Replaced	1595	1-10-92
904 KAR 2:116E	2192	11-21-91
Replaced	2826	3-7-92
904 KAR 2:360E	1310	9-24-91
Replaced	1891	11-25-91
904 KAR 3:010E	1819	11-7-91
Replaced	2043	2-7-92
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
Replaced	2047	2-7-92
905 KAR 2:080E	1313	10-8-91
Replaced	1734	1-10-92
Resubmitted	3172	4-9-92
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
Replaced	2583	3-7-92
907 KAR 1:150E	1828	11-7-91
Replaced	2584	3-7-92
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

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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
Replaced	2586	3-7-92

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11 KAR 3:100	3541	
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11 KAR 5:001	3543	
11 KAR 5:010		
Repealed	3301	5-8-92
11 KAR 5:030		
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11 KAR 5:033	3544	
11 KAR 5:034	3545	
11 KAR 5:036	3546	
11 KAR 5:110		
Amended	3475	
11 KAR 5:120		
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11 KAR 5:130		
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11 KAR 5:140		
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11 KAR 5:145	3547	
11 KAR 5:150		
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11 KAR 5:160		
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11 KAR 5:170		
Amended	3483	
11 KAR 5:180		
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11 KAR 8:030		
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11 KAR 10:010		
Amended	3486	
11 KAR 10:020		
Amended	3489	
11 KAR 11:010		
Repealed	3303	5-8-92
11 KAR 11:030		
Repealed	3305	5-8-92
11 KAR 12:001	2069	2-7-92
13 KAR 2:020		
Amended	3491	
30 KAR 1:040		
As Amended	276	8-2-91
30 KAR 1:050		
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31 KAR 4:070	555	
As Amended	1320	
45 KAR 1:020		
Repealed	2197	1-10-92
45 KAR 1:030	1692	
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45 KAR 1:040	1693	
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45 KAR 1:050	1695	
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101 KAR 1:325		
Amended	82	9-6-91
101 KAR 2:035		
Amended	83	
Withdrawn		10-7-91
Expired**		4-14-92
101 KAR 2:036	3549	
101 KAR 2:045		
Amended	1155	12-8-91
Expired**		4-14-92
101 KAR 2:046	3551	
101 KAR 2:055		
Expired**		4-14-92
101 KAR 2:056	3553	
101 KAR 2:065		
Expired**		4-14-92
101 KAR 2:066	3554	
101 KAR 2:075		
Expired**		4-14-92
101 KAR 2:076	3555	
102 KAR 1:162		
Expired***		7-14-92
103 KAR 18:100		
Expired**		4-14-92
104 KAR 1:010		
Amended	2862	
As Amended	3178	4-14-92
104 KAR 1:020		
Amended	2863	
As Amended	3179	4-14-92
104 KAR 1:030		
Amended	2867	
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104 KAR 1:040		
Amended	2868	
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104 KAR 1:050		
Amended	2869	
As Amended	3186	4-14-92
104 KAR 1:060		
Amended	1870	
As Amended	3187	4-14-92
104 KAR 1:070		
Amended	2871	4-14-92
105 KAR 1:010		
Amended	3494	
105 KAR 1:070		
Amended	722	11-8-91
105 KAR 1:110		
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105 KAR 1:120	920	
As Amended	1320	11-8-91
105 KAR 1:130	921	
As Amended	1321	11-8-91
105 KAR 1:140	922	
As Amended	1321	11-8-91
105 KAR 1:150	924	11-8-91
105 KAR 1:160	925	
As Amended	1322	11-8-91
105 KAR 1:170	927	
As Amended	1323	11-8-91
105 KAR 1:180	928	11-8-91
105 KAR 1:190	929	11-8-91
105 KAR 1:200	931	
As Amended	1324	11-8-91
105 KAR 1:210	932	11-8-91
105 KAR 1:215	934	
As Amended	1326	11-8-91
105 KAR 1:220	936	11-8-91
105 KAR 1:230	939	11-8-91
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106 KAR 1:040		
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106 KAR 1:080		
Amended	54	
Withdrawn		8-27-91
106 KAR 1:081	1697	
Amended	2310	1-27-92
106 KAR 1:090		
Amended	68	
Withdrawn		8-27-91
106 KAR 1:091	1712	
Amended	2325	
As Amended	2522	1-27-92
106 KAR 1:100		
Amended	73	
Withdrawn		8-27-91
106 KAR 1:101	1717	1-27-92
106 KAR 1:111	1719	1-27-92
106 KAR 1:120		
Amended	73	
Withdrawn		8-27-91
106 KAR 1:121	1720	
Amended	2329	1-27-92
106 KAR 1:131	1721	
Amended	2330	1-27-92
107 KAR 1:025		
Amended	1910	
Withdrawn		2-3-92
107 KAR 1:050		
Amended	1910	
Withdrawn		2-3-92
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108 KAR 1:030	2070	
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108 KAR 1:040	3065	
109 KAR 10:010		
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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	
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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 5:300		
Repealed	1725	1-10-92
200 KAR 5:301		
Amended	1354	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		
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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		
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200 KAR 12:020		
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200 KAR 14:030		
Expired***		7-14-92
200 KAR 14:080		
As Amended	278	7-29-91
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200 KAR 14:090		
As Amended	279	7-29-91
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200 KAR 16:010		
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200 KAR 16:020		
Repealed	2069	2-7-92
200 KAR 16:030		
Repealed	2069	2-7-92
200 KAR 16:040		
Repealed	2069	2-7-92
200 KAR 16:050		
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200 KAR 16:070		
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200 KAR 16:080		
Repealed	2069	2-7-92
200 KAR 16:090		
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200 KAR 17:020		
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200 KAR 17:030		
As Amended	674	8-22-91
200 KAR 17:040		
As Amended	677	8-22-91
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200 KAR 17:050		
As Amended	679	8-22-91
200 KAR 18:010		
Repealed	2915	3-6-92
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201 KAR 1:015		
Amended	2972	
201 KAR 1:020		
Amended	2972	
201 KAR 1:040		
Amended	2973	
201 KAR 1:045		
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201 KAR 1:050		
Amended	2975	
201 KAR 1:065		
Amended	2976	
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201 KAR 1:080		
Amended	2977	
201 KAR 1:100		
Amended	2872	
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201 KAR 1:130	3067	
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201 KAR 1:140	3069	
201 KAR 1:150	3070	
201 KAR 2:010		
Amended	1159	
Died*		11-7-91
Amended	1911	2-19-92
201 KAR 2:061	2449	
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201 KAR 2:105		
Amended	2348	
Amended	2832	
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201 KAR 2:167	2734	
Withdrawn		2-14-92
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Withdrawn		4-23-92
201 KAR 2:200	3072	
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201 KAR 9:031		
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201 KAR 9:041		
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201 KAR 9:175		
Amended	327	
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201 KAR 9:300	210	
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201 KAR 9:305	211	
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201 KAR 10:050		
Amended	3497	
201 KAR 10:060		
Amended	3209	
201 KAR 10:080	1726	
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201 KAR 11:230		
Amended	2592	3-25-92
201 KAR 13:050		
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201 KAR 18:075	3271	
201 KAR 18:131	2450	
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201 KAR 20:056		
Amended	331	
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201 KAR 20:200		
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201 KAR 20:215		
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201 KAR 22:020		
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201 KAR 22:053		
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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	
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201 KAR 30:100	940	11-22-91
201 KAR 30:110	945	11-22-91
201 KAR 30:120	946	
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201 KAR 30:130	947	11-22-91
301 KAR 1:015		
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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	
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301 KAR 2:111		
Amended	309	
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Amended	3498	
301 KAR 2:140		
Amended	1161	11-26-91
301 KAR 2:170		
As Amended	18	6-26-91
Amended	3216	
301 KAR 2:190		
Repealed	1331	10-22-91
301 KAR 2:195	948	
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301 KAR 2:210		
Amended	3220	
301 KAR 2:220		
Amended	1381	12-17-92
301 KAR 2:250		
Amended	2597	4-14-92
301 KAR 3:021		
Amended	90	8-28-91
301 KAR 3:022	3556	
301 KAR 3:080		
Repealed	619	8-9-91
301 KAR 10:010	212	
Amended	704	9-25-91
302 KAR 16:080	3271	
302 KAR 20:230	2070	
As Amended	2774	2-10-92
302 KAR 45:010		
Amended	743	
As Amended	1840	11-26-91
306 KAR 1:010		
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306 KAR 1:020		
Amended	2877	
As Amended	3194	4-14-92
306 KAR 1:030		
Amended	2877	4-14-92
306 KAR 1:040		
Amended	2878	4-14-92
306 KAR 1:050		
Amended	2879	4-14-92
306 KAR 1:060		
Amended	2879	4-14-92
306 KAR 1:070		
Amended	2880	4-14-92
306 KAR 1:090		
Amended	2881	4-14-92
306 KAR 2:010		
Amended	2881	
As Amended	3194	4-14-92
400 KAR 1:070	556	
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401 KAR 4:220		
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401 KAR 5:010		
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401 KAR 6:310		
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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 8:030		
Amended	3506	
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 30:010		
Amended	2978	
Amended	3420	
401 KAR 30:031	3074	
Amended	3430	
401 KAR 31:010		
Amended	92	9-25-91
401 KAR 31:030		
Amended	103	9-25-91
401 KAR 31:040		
Amended	106	9-25-91
401 KAR 31:060		
Amended	118	
Amended	706	9-25-91
401 KAR 31:110		
Amended	122	
Amended	708	
As Amended	999	9-25-91
401 KAR 32:010		
Amended	125	
Amended	710	
As Amended	1001	9-25-91
401 KAR 32:100		
Amended	127	9-25-91
401 KAR 34:230		
Amended	132	
Amended	712	9-25-91
401 KAR 35:200		
Amended	136	
As Amended	1003	9-25-91
401 KAR 35:220		
Amended	139	9-25-91
401 KAR 35:240		
Amended	143	9-25-91
401 KAR 37:100		
Amended	145	9-25-91
401 KAR 45:010	3076	
Amended	3432	
401 KAR 45:020	3078	
401 KAR 45:030	3080	
Amended	3433	
401 KAR 45:040	3084	
Amended	3436	
401 KAR 45:050	3086	
401 KAR 45:060	3089	
Amended	3437	
401 KAR 45:070	3090	
Amended	3438	
401 KAR 45:080	3092	
Amended	3439	

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401 KAR 45:090	3094	
Amended	3440	
401 KAR 45:100	3097	
Amended	3442	
401 KAR 45:110	3103	
401 KAR 45:130	3106	
401 KAR 45:135	3107	
Amended	3446	
401 KAR 45:140	3109	
401 KAR 45:160	3111	
Amended	3447	
401 KAR 45:210	3115	
401 KAR 45:250	3117	
401 KAR 48:050		
Amended	147	9-25-91
401 KAR 50:010		
Amended	744	
Died*		10-15-91
Amended	2599	
Amended	2926	
As Amended	3329	
401 KAR 50:012		
Amended	749	
Died*		10-15-91
Amended	2604	
Amended	2929	
As Amended	3333	
401 KAR 50:046	952	
Died*		10-15-91
401 KAR 50:047	2734	
As Amended	3333	
401 KAR 51:001	2737	
Amended	2930	
As Amended	3335	
401 KAR 51:017		
Amended	750	
Died*		10-15-91
Amended	2605	
401 KAR 58:005		
Recodified from 401 KAR 63:045		2-24-92
401 KAR 58:010		
Recodified from 401 KAR 63:050		2-24-92
401 KAR 59:001	2741	
Amended	2933	
As Amended	3337	
401 KAR 59:185		
Amended	2616	
Amended	2936	
As Amended	3340	
401 KAR 59:190		
Amended	2619	
Amended	2938	
As Amended	3342	
401 KAR 59:210		
Amended	2622	
Amended	2939	
As Amended	3344	
401 KAR 59:212		
Amended	2625	
Amended	2941	
As Amended	3346	
401 KAR 59:214		
Amended	763	
Died*		10-15-91
Amended	2629	
Amended	2943	
As Amended	3347	
401 KAR 59:225		
Amended	767	
Died*		10-15-91
Amended	2632	
Amended	2945	
As Amended	3349	

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401 KAR 59:230		
Amended	771	
Died*		10-15-91
Amended	2635	
Amended	2947	
As Amended	3351	
401 KAR 59:240		
Amended	774	
Died*		10-15-91
Amended	2638	
Amended	2949	
As Amended	3353	
401 KAR 59:315	2744	
As Amended	3354	
401 KAR 61:001	2746	
Amended	2950	
As Amended	3354	
401 KAR 61:050		
Amended	2640	
As Amended	3357	
401 KAR 61:090		
Amended	2643	
Amended	2953	
As Amended	3359	
401 KAR 61:095		
Amended	2646	
As Amended	3361	
401 KAR 61:100		
Amended	2650	
As Amended	3363	
401 KAR 61:105		
Amended	2652	
As Amended	3364	
401 KAR 61:110		
Amended	2655	
As Amended	3366	
401 KAR 61:120		
Amended	2658	
As Amended	3367	
401 KAR 61:122		
Amended	2661	
Amended	2955	
As Amended	3369	
401 KAR 61:124		
Amended	777	
Died*		10-15-91
Amended	2664	
As Amended	3371	
401 KAR 61:125		
Amended	2667	
As Amended	3372	
401 KAR 61:130		
Amended	2670	
As Amended	3374	
401 KAR 61:132		
Amended	780	
Died*		10-15-91
Amended	2672	
Amended	2956	
As Amended	3376	
401 KAR 61:137		
Amended	784	
Died*		10-15-91
Amended	2676	
As Amended	3377	
401 KAR 61:150		
Amended	787	
Died*		10-15-91
Amended	2678	
As Amended	3379	
401 KAR 61:155		
Amended	2680	
As Amended	3380	

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401 KAR 61:160		
Amended	790	
Died*		10-15-91
Amended	2682	
As Amended	3381	
401 KAR 61:175		
Amended	792	
Died*		10-15-91
Amended	2684	
As Amended	3382	
401 KAR 63:001	2750	
Amended	2958	
As Amended	3384	
401 KAR 63:025		
Amended	2686	
As Amended	3386	
401 KAR 63:045		
Recodified to 401 KAR 58:005		2-24-92
401 KAR 63:050		
Recodified to 401 KAR 58:010		2-24-92
405 KAR 7:001	2453	
Amended	2834	4-3-92
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	4-3-92
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	
Amended	2837	4-3-92
405 KAR 8:010		
Amended	360	
Amended	1072	
Withdrawn		10-30-91
Amended	1912	
Amended	2542	
As Amended	2774	4-3-92
405 KAR 8:020		
Amended	375	11-26-91
405 KAR 8:030		
Amended	379	
Amended	1087	
As Amended	2207	
Withdrawn		3-5-92
Amended	2992	
Amended	3450	
405 KAR 8:040		
Amended	394	
Amended	1100	
As Amended	2220	
Withdrawn		3-5-92
Amended	3004	
Amended	3460	
405 KAR 10:001	2468	
Amended	2842	4-3-92
405 KAR 10:050		
Amended	409	
Withdrawn		8-15-91
405 KAR 10:200		
Amended	411	
As Amended	1868	11-26-91
405 KAR 12:001	2472	4-3-92
405 KAR 16:001	2475	
Amended	2844	4-3-92

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405 KAR 16:180		
Amended	416	
Amended	1114	
As Amended	2234	
Withdrawn		3-5-92
Amended	3017	
Amended	3472	
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	
Amended	2849	4-3-92
405 KAR 18:180		
Amended	434	
Amended	1123	
As Amended	2245	
Withdrawn		3-5-92
Amended	3020	
Amended	3473	
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	
Amended	2853	4-3-92
405 KAR 20:010		
Amended	452	12-17-91
405 KAR 24:001	2495	4-3-92
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
500 KAR 9:015		
Expired**		4-14-92
501 KAR 6:020		
Amended	150	9-6-91
Amended	795	11-8-91
Amended	1927	2-7-92
Amended	2352	3-7-92
Amended	2882	5-1-92
Amended	3513	

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501 KAR 6:030		
Amended	455	10-6-91
Amended	1929	2-7-92
Amended	2688	4-3-92
Amended	3022	
Amended	3222	
501 KAR 6:040		
Amended	797	11-8-91
Amended	2884	5-1-92
Amended	3514	
501 KAR 6:050		
Amended	152	9-6-91
Amended	1403	1-10-92
Amended	3224	
Amended	3515	
501 KAR 6:060		
Amended	1194	12-8-91
Amended	3225	
Amended	3517	
501 KAR 6:070		
Amended	153	9-6-91
Amended	457	
As Amended	1006	10-6-91
Amended	1931	2-7-92
Amended	3226	
501 KAR 6:080		
Amended	154	9-6-91
501 KAR 6:090		
Amended	459	10-6-91
Amended	1196	12-8-91
Amended	2885	5-1-92
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	3-7-92
Amended	3024	
501 KAR 6:160		
Amended	1935	2-7-92
Amended	2690	4-3-92
601 KAR 1:029		
Amended	2354	
Withdrawn		12-18-91
Amended	2691	4-3-92
601 KAR 1:030		
Amended	2355	
Withdrawn		12-18-91
Amended	2692	4-3-92
601 KAR 1:031	2499	
Withdrawn		12-18-91
Resubmitted	2753	4-3-92
601 KAR 1:040		
Amended	2359	
Withdrawn		12-18-91
Amended	2695	
Amended	2961	
As Amended	3195	5-1-92
601 KAR 1:045		
Amended	2362	
Withdrawn		12-18-91
Amended	2697	4-3-92
601 KAR 1:116	1258	
Amended	1897	1-10-92
Expired**		4-14-92
601 KAR 1:120		
Repealed	2072	2-7-92
601 KAR 1:140		
Amended	2363	
Withdrawn		12-18-91
Amended	2698	
Withdrawn		3-2-92
601 KAR 1:180	2072	2-7-92
601 KAR 1:190	2902	5-1-92
601 KAR 2:010		
Amended	2365	
Withdrawn		12-18-91
Amended	2700	
As Amended	2919	4-3-92
601 KAR 9:135		
Amended	2367	3-7-92
601 KAR 11:040		
Amended	3228	
601 KAR 12:060	567	
As Amended	1007	10-1-91
601 KAR 40:010	955	11-8-91
Amended	2701	4-3-92
601 KAR 40:020	956	11-8-91
Amended	2702	4-3-92
603 KAR 3:010		
Expired***		7-14-92
603 KAR 3:020		
Expired***		7-14-92
603 KAR 4:025		
Expired***		7-14-92
603 KAR 5:066		
Amended	2370	3-7-92
603 KAR 5:070		
Amended	460	
As Amended	1008	
As Amended	1335	10-1-91
Amended	2372	3-7-92
603 KAR 5:071		
Amended	464	10-1-91
603 KAR 5:096		
Expired***		7-14-92
603 KAR 5:250		
As Amended	280	7-2-91
605 KAR 1:010		
Amended	466	10-1-91
605 KAR 1:030		
Amended	467	10-1-91
605 KAR 1:050		
Amended	469	10-1-91
605 KAR 1:090		
Amended	470	10-1-91
605 KAR 1:130		
Amended	471	10-1-91
605 KAR 1:150		
Expired***		7-14-92
605 KAR 1:160		
Amended	474	10-1-91
605 KAR 1:190		
As Amended	1338	11-8-91
701 KAR 1:001	2754	4-3-92
701 KAR 5:020		
Amended	1199	
As Amended	1882	12-8-91
701 KAR 5:050		
Amended	2704	
As Amended	2920	4-3-92
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

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Amended		3518
702 KAR 1:060		
Repealed	2754	4-3-92
702 KAR 3:045		
Amended	3519	
702 KAR 3:200		
Repealed	2755	4-3-92
702 KAR 3:201	2755	4-3-92
702 KAR 3:220		
Amended	476	11-8-91
702 KAR 3:250	220	
As Amended	686	9-6-91
Amended	3520	
702 KAR 4:050		
Amended	1936	
Withdrawn		11-21-91
Amended	2377	
As Amended	2785	3-7-92
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 5:010		
Amended	3026	
As Amended	3387	
702 KAR 5:030		
Amended	477	11-8-91
Amended	3027	
As Amended	3388	
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 7:050		
Amended	3521	
702 KAR 7:065		
Amended	1200	12-8-91
702 KAR 7:100		
Expired**		4-14-92
704 KAR 3:005		
Repealed	260	7-11-91
704 KAR 3:006	571	
Amended	1136	
As Amended	1340	11-8-91
Amended	2705	
As Amended	3197	5-1-92
704 KAR 3:007	2757	5-1-92
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
Amended	3523	
704 KAR 3:303	3558	
704 KAR 3:304		
Expired**		4-14-92
704 KAR 3:325		
Amended	3525	

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704 KAR 3:410		
Amended	160	
As Amended	687	9-6-91
704 KAR 3:440	3559	
704 KAR 4:015		
Repealed	2754	4-3-92
704 KAR 4:020		
Amended	1202	
As Amended	2256	1-10-92
704 KAR 7:055		
Expired**		4-14-92
704 KAR 7:060		
Amended	2707	4-3-92
704 KAR 7:090		
Amended	482	
As Amended	1011	10-6-91
704 KAR 15:010		
Recodified to 704 KAR 20:001		3-9-92
704 KAR 15:015		
Recodified to 704 KAR 20:128		3-9-92
704 KAR 15:020		
Recodified to 704 KAR 20:002		3-9-92
704 KAR 15:030		
Recodified to 704 KAR 20:003		3-9-92
704 KAR 15:040		
Recodified to 704 KAR 20:032		3-9-92
704 KAR 15:090		
Repealed	574	10-6-91
704 KAR 15:091	574	10-6-91
704 KAR 20:001		
Recodified from 704 KAR 15:010		3-9-92
704 KAR 20:002		
Recodified from 704 KAR 15:020		3-9-92
704 KAR 20:003		
Recodified from 704 KAR 15:030		3-9-92
704 KAR 20:005		
Amended	2886	
Withdrawn		4-8-92
704 KAR 20:032		
Recodified from 704 KAR 15:040		3-9-92
704 KAR 20:110		
Amended	2887	5-1-92
704 KAR 20:128		
Recodified from 704 KAR 15:015		3-9-92
704 KAR 20:132		
Amended	2888	
Withdrawn		4-8-92
704 KAR 20:140		
Repealed	2906	5-1-92
704 KAR 20:165		
Amended	2889	
Withdrawn		4-8-92
704 KAR 20:194		
Amended	2890	
Withdrawn		4-8-92
704 KAR 20:195		
Amended	2891	
Withdrawn		4-8-92
704 KAR 20:310		
Amended	2892	5-1-92
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
704 KAR 20:610	2903	5-1-92
704 KAR 20:630	3560	
704 KAR 20:640	2906	5-1-92
704 KAR 20:650	2906	5-1-92
705 KAR 3:011	575	10-6-91
705 KAR 3:020		
Repealed	2754	4-3-92

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705 KAR 3:050		
Repealed	575	10-6-91
705 KAR 3:060		
Repealed	2754	4-3-92
705 KAR 3:090		
Repealed	575	10-6-91
705 KAR 4:205		
Repealed	2754	4-3-92
705 KAR 5:010		
Repealed	2754	4-3-92
705 KAR 5:050		
Repealed	575	10-6-91
707 KAR 1:040		
Amended	1939	
As Amended	2526	2-7-92
707 KAR 1:054		
Amended	486	
Amended	1140	11-8-91
707 KAR 1:150	228	
Amended	718	
As Amended	1014	10-6-91
725 KAR 2:060	3277	
725 KAR 2:070	3278	
730 KAR 1:005		
Expired***		7-14-92
740 KAR 1:010		
Amended	2380	3-4-92
740 KAR 1:020		
Amended	2381	3-4-92
740 KAR 1:030		
Amended	2382	3-4-92
740 KAR 1:040		
Amended	2384	3-4-92
740 KAR 1:050		
Amended	2385	3-4-92
740 KAR 1:060		
Amended	2386	3-4-92
740 KAR 1:070		
Expired***		7-14-92
740 KAR 1:080		
Amended	2387	3-4-92
740 KAR 1:090		
Amended	2388	3-4-92
740 KAR 1:100		
Amended	2389	3-4-92
770 KAR 1:010	2072	2-7-92
770 KAR 1:020	2073	2-7-92
770 KAR 1:030	2074	2-7-92
770 KAR 1:040	2075	2-7-92
770 KAR 1:050	2076	2-7-92
770 KAR 1:060	2076	2-7-92
780 KAR 2:070		
Amended	3028	
780 KAR 2:100		
Amended	3230	
780 KAR 2:110		
Amended	3232	
780 KAR 2:120		
Amended	3233	
780 KAR 2:130		
As Amended	47	7-5-91
780 KAR 2:150	3118	
780 KAR 3:020		
Amended	1407	
Withdrawn		12-3-91
Amended	3527	
780 KAR 3:070		
Amended	3234	
780 KAR 9:010		
Amended	2894	5-1-92
783 KAR 1:030	232	
Amended	721	10-6-91
784 KAR 1:010	576	
As Amended	1017	10-6-91
784 KAR 1:020	578	
As Amended	1019	10-6-91
801 KAR 2:010		
Amended	1940	
As Amended	2527	2-6-92
803 KAR 1:063		
Amended	3029	
As Amended	3388	
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	2-7-92
Amended	3528	
803 KAR 2:318		
Amended	183	9-6-91
803 KAR 2:320		
Amended	1946	2-7-92
Amended	3529	
803 KAR 2:403		
Amended	184	9-6-91
Amended	1950	2-7-92
803 KAR 2:423		
Amended	1952	2-7-92
803 KAR 6:010		
Amended	3532	
803 KAR 25:011		
Amended	2708	
Amended	2963	
As Amended	3199	5-1-92
803 KAR 25:060		
Repealed	2758	5-1-92
803 KAR 25:061	2758	5-1-92
804 KAR 1:100		
Amended	186	8-30-91
804 KAR 4:300	3560	
804 KAR 5:040		
Expired**		4-14-92
804 KAR 5:070	3561	
804 KAR 9:040		
Amended	3536	
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	
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806 KAR 3:160	958	11-8-91
806 KAR 3:170	959	11-8-91
806 KAR 4:010		
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806 KAR 7:100	964	
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806 KAR 12:094		
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806 KAR 17:066		
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806 KAR 18:040		
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806 KAR 19:030		
Amended	1208	12-8-91
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807 KAR 5:001		
Amended	191	
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807 KAR 5:005	241	
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807 KAR 5:006		
Amended	1953	
Amended	2554	2-26-92
807 KAR 5:008		
Repealed	2554	2-26-92
807 KAR 5:023	1259	
Amended	1897	1-10-92
807 KAR 5:066		
Amended	1968	
As Amended	3388	
808 KAR 10:010		
Amended	199	
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808 KAR 10:220		
Amended	200	
Withdrawn		8-20-91
808 KAR 10:260	244	
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808 KAR 10:270	245	
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810 KAR 1:001		
Amended	1977	2-19-92
810 KAR 1:002		
Amended	1980	2-19-92
Expired**		4-14-92
810 KAR 1:003		
Amended	1408	
Withdrawn		11-19-91
Amended	1982	2-19-92
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Amended	1986	2-19-92
810 KAR 1:005		
Amended	1989	2-19-92
810 KAR 1:006		
Amended	1991	2-19-92
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810 KAR 1:007		
Amended	1995	2-19-92
810 KAR 1:008		
Amended	1997	2-19-92
810 KAR 1:009		
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810 KAR 1:010		
Amended	2001	2-19-92
810 KAR 1:011		
Amended	2003	3-3-92
810 KAR 1:012		
Amended	1413	
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Amended	2005	2-19-92
810 KAR 1:013		
Amended	2007	2-19-92
Expired**		4-14-92

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810 KAR 1:017		
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810 KAR 1:018		
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810 KAR 1:019		
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810 KAR 1:020		
Amended	2020	2-19-92
Expired**		4-14-92
810 KAR 1:021		
Amended	2024	2-19-92
810 KAR 1:023	2500	
Withdrawn		1-28-92
810 KAR 1:024	3280	
810 KAR 1:025	3282	
810 KAR 1:026	3285	
810 KAR 1:027	3288	
810 KAR 1:028	3290	
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815 KAR 4:010		
Amended	2432	3-7-92
815 KAR 7:010		
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815 KAR 7:025		
Amended	1218	12-8-91
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815 KAR 7:070		
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815 KAR 7:080		
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815 KAR 10:020		
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815 KAR 10:045	2758	4-3-92
815 KAR 15:020		
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815 KAR 20:020		
Amended	1228	
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815 KAR 20:030		
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815 KAR 20:050		
Amended	1231	
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815 KAR 20:060		
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815 KAR 20:078	3561	
815 KAR 20:090		
Amended	2722	4-3-92
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815 KAR 20:120		
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815 KAR 20:130		
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815 KAR 25:020		
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815 KAR 30:060		
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815 KAR 46:010		
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900 KAR 1:006		
Repealed	1263	11-25-91
900 KAR 1:007	1263	11-25-91
900 KAR 1:011		
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900 KAR 1:040		
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900 KAR 1:060		
Amended	1426	
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900 KAR 2:050	1729	
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900 KAR 2:060	1731	
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900 KAR 4:010		
Amended	78	
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902 KAR 4:010		
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902 KAR 4:070		
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902 KAR 4:080		
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902 KAR 8:030		
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902 KAR 10:010		
Amended	1431	
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902 KAR 10:030		
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902 KAR 10:085		
Amended	3239	
902 KAR 10:110		
Amended	1433	
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902 KAR 10:140	579	
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902 KAR 13:010		
Amended	1435	
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902 KAR 13:020		
Amended	1436	
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902 KAR 13:040		
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902 KAR 13:080		
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902 KAR 13:090		
Amended	1439	
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902 KAR 13:100		
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902 KAR 13:110		
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902 KAR 17:010		
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902 KAR 20:006		
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902 KAR 20:016		
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902 KAR 20:018		
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902 KAR 20:066		
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902 KAR 20:106		
Amended	824	10-16-91
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902 KAR 20:115		
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Amended	839	10-16-91
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Amended	866	10-16-91
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902 KAR 20:340	1733	
Died*		12-6-91
902 KAR 22:010	2501	
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902 KAR 22:030	2502	
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902 KAR 47:060		
Amended	1449	1-10-92
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Amended	1453	1-10-92
902 KAR 50:030		
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902 KAR 100:060		
Amended	1522	1-10-92
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903 KAR 5:270		
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904 KAR 2:040		
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904 KAR 3:010		
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905 KAR 7:100		
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905 KAR 8:010		
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905 KAR 8:020		
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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 8:070		
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905 KAR 8:080		
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905 KAR 8:090		
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Amended	2574	
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905 KAR 8:110		
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905 KAR 8:130		
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908 KAR 1:100		
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908 KAR 1:150		
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908 KAR 1:170		
Amended	1672	1-10-92
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Amended	1673	1-10-92
908 KAR 1:190		
Amended	1674	1-10-92
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908 KAR 1:220		
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908 KAR 3:010		
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908 KAR 3:030		
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908 KAR 3:060		
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908 KAR 3:100		
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*Statement of Consideration not Filed within 15 Days Following Hearing, Regulation Dies (KRS 13A.280(2))

**Regulation found deficient by a legislative subcommittee during 1990-91 interim or 1992 General Assembly; regulation expires on sine die adjournment of the 1992 General Assembly (KRS 13A.333)

***Regulation found deficient by a legislative subcommittee during quadreenail review during the 1990-91 interim; regulation expires on effective date of acts passed during the 1992 General Assembly (KRS 13A.347(4))

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