ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 20, NUMBER 3
WEDNESDAY, SEPTEMBER 1, 1993

Administrative Regulation Review Subcommittee, September Agenda 479
Regulation Review Procedure 482

Emergency Regulations Now In Effect:
Legislative Ethics Commission 483
Personnel 483
Fish and Wildlife Resources 492
Petroleum Storage Tank Environmental Assurance Fund 495
Racing Commission 496
Human Resources 502
As Amended:
Board of Nursing 508
Education 503
Labor - OSH 511
Human Resources 511
Amended After Hearing:
Auditor of Public Accounts 522
NREPC - Air Quality 522
NREPC - Surface Mining 544
Transportation 545
Human Resources 553
Proposed Amendments Received Through Noon, August 15, 1993:
Personnel 567
Board of Psychology 577
Fish and Wildlife Resources 592
Agriculture 605
NREPC - Air Quality 507
Corrections 624
Transportation 629
Education 630
Labor - OSH 638
Financial Institutions 649
Housing, Buildings and Construction 650
Human Resources 655
Proposed Regulations Received Through Noon, August 15, 1993:
Legislative Ethics Commission 668
Board of Accountancy 668
Board of Psychology 671
Fish and Wildlife Resources 679
NREPC - Water 680
NREPC - Air Quality 693
NREPC - Conservation 702
Petroleum Storage Tank Environmental Assurance Fund 706
Education 711
School Facility Construction Commission 716
Workers' Compensation Board 717
Financial Institutions 719
Human Resources 719
August Minutes of the Administrative Regulation Review Subcommittee 726
Other Committee Reports 731

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates C2
KRS Index C10
Subject Index C14

MEETING NOTICE: The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on September 3, 1993 at 10 a.m.. See **tentative** agenda on pages 479-481 in this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1993 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).
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

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
c 1993 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $48 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year. Second class postage paid at Frankfort, Kentucky.
POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator John A. "Eck" Rose
Senate President Pro Tem

Representative Joe Clarke
Speaker of the House

Senate and House Members

Senator Charles W. Berger
Assistant President Pro Tem

Representative Larry Clark
Speaker Pro Tem

Senator David K. Karem
Majority Floor Leader

Representative Gregory D. Stumbo
Majority Floor Leader

Senator John D. Rogers
Minority Floor Leader

Representative Tom Jensen
Minority Floor Leader

Senator Nick Kafoglis
Majority Caucus Chairman

Representative Jody Richards
Majority Caucus Chairman

Senator Tom Buford
Minority Caucus Chairman

Representative Clarence Noland
Minority Caucus Chairman

Senator Fred Bradley
Majority Whip

Representative Kenny Rapier
Majority Whip

Senator Charlie Borders
Minority Whip

Representative Danny Ford
Minority Whip

Vic Hellard, Jr. Director
Samuel L. Hensley, Assistant Director for Education and Information

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Representative Tom Kerr, Chairman
Senator Gene Huff
Senator Nick Kafoglis
Senator Tom Smith
Representative Woody Allen
Representative Jim Bruce
Representative James B. Yates

Staff

Patrice Carroll
Susan Eastman
O. Joseph Hood
Peggy Jones
Gregory Karambellas
Tom Troth
Donna Valencia
Susan Wunderlich

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - September 3, 1993 @ 10 A.M.
Room 149, Capitol Annex

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Congressional Teacher Scholarship Program

11 KAR 10:010. Paul Douglas teacher scholarship program.

11 KAR 10:020. Deferment and reduction of repayment.

AUDITOR OF PUBLIC ACCOUNTS

Audits

45 KAR 1:070. Technical audit bulletins. (Amended After Hearing)

DEPARTMENT FOR LOCAL GOVERNMENT

Policy and Management

109 KAR 10:010. Local government economic assistance fund grants. (Deferred from August)

GENERAL GOVERNMENT CABINET

Board of Medical Licensure

201 KAR 9:310. Continuing medical education. (Deferred from August)

201 KAR 9:315. HIV/HBV infection control for physicians.

Board of Nursing

201 KAR 20:390. Nursing incentive scholarship fund.

Board of Podiatry

201 KAR 25:031. Continuing education.

Board of Registration for Professional Geologists

201 KAR 31:020 Compensation of board members.

ECONOMIC DEVELOPMENT CABINET
Department of Agriculture

Fairs and Shows

302 KAR 15:010E. Administration; state aid to local fairs. (Deferred from August)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Division for Air Quality

Hazardous Pollutants

401 KAR 57:041. National emission standards for hazardous air pollutants; benzene waste operations. (Not Amended After Hearing)

Asbestos

401 KAR 58:001. Definitions and abbreviations of terms used in Title 401, Chapter 58. (Not Amended After Hearing)

401 KAR 58:020. Controlling asbestos emissions. (Repeals 401 KAR 57:011; 401 KAR 63:042.) (Amended After Hearing)

New Source Standards

401 KAR 59:435. Standards of performance for small industrial-commercial-institutional steam generating units. (Not Amended After Hearing)

401 KAR 59:450. Standards of performance for portland cement plants. (Repeals 401 KAR 59:025.) (Not Amended After Hearing)

401 KAR 59:455. Standards of performance for nitric acid plants. (Repeals 401 KAR 59:031.) (Not Amended After Hearing)

401 KAR 59:465. Standards of performance for hot mix asphalt facilities. (Repeals 401 KAR 59:041.) (Not Amended After Hearing)

401 KAR 59:485. Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984. (Repeals 401 KAR 59:052.) (Not Amended After Hearing)

401 KAR 59:490. Standards of performance foe secondary lead smelters. (Repeals 401 KAR 59:055.) (Not Amended After Hearing)

401 KAR 59:495. Standards of performance for secondary brass and bronze production plants. (Repeals 401 KAR 59:061.) (Not Amended After Hearing)

401 KAR 59:500. Standards of performance for primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973. (Repeals 401 KAR 59:066.) (Not Amended After Hearing)

401 KAR 59:505. Standards of performance for secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983. (Repeals 401 KAR 59:068.) (Not Amended After Hearing)

401 KAR 59:535. Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants. (401 KAR 59:131.)

401 KAR 59:540. Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants. (Repeals 401 KAR 59:136.) (Not Amended After Hearing)

401 KAR 59:545. Standards of performance for the phosphate fertilizer industry: diammanium phosphate plants. (Repeals 401 KAR 59:141.) (Not Amended After Hearing)

401 KAR 59:550. Standards of performance for the phosphate fertilizer industry: triple superphosphate plants. (Repeals 401 KAR 59:146.) (Not Amended After Hearing)

401 KAR 59:555. Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities. (Repeals 401 KAR 59:150.) (Not Amended After Hearing)

401 KAR 59:570. Standards of performance for steel plants: electric arc furnaces constructed after October 21, 1974, and on or before August 17, 1983. (Repeals 401 KAR 59:166.) (Not Amended After Hearing)

401 KAR 59:575. Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983. (Repeals 401 KAR 59:168.) (Not Amended After Hearing)

401 KAR 59:580. Standards of performance for kraft pulp mills. (Repeals 401 KAR 59:082.) (Not Amended After Hearing)

401 KAR 59:585. Standards of performance for glass manufacturing plants. (Repeals 401 KAR 59:251.) (Not Amended After Hearing)

401 KAR 59:590. Standards of performance for grain elevators. (Repeals 401 KAR 59:275.) (Not Amended After Hearing)

401 KAR 59:595. Standards of performance for surface coating of metal furniture. (Repeals 401 KAR 59:196.) (Not Amended After Hearing)

General Standards of Performance

401 KAR 63:036. Stage II, gasoline dispensing facilities. (Amended After Hearing)

Air Pollution - Mobile Source-related Emissions

401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65.

401 KAR 65:010. Vehicle emission control program.

Department for Surface Mining Reclamation and Enforcement

Bond and Insurance Requirements

405 KAR 10:050. Bond forfeiture. (Amended After Hearing)

Inspection and Enforcement

405 KAR 12:001. Definitions for 405 KAR Chapter 12. (Not Amended After Hearing)

405 KAR 12:010. General provisions for inspection and enforcement. (Not Amended After Hearing)

DEPARTMENT OF CORRECTIONS

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:060. Northpoint Training Center.

501 KAR 6:150. Eastern Kentucky Correctional Complex.

TRANSPORTATION CABINET

Administration

600 KAR 1:100. Professional engineering and related services procurement. (Amended After Hearing)

Property Acquisition and Uniform Relocation

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet.

Department of Vehicle Regulation

Motor Vehicle Tax

601 KAR 9:012. Personalized license plates.

601 KAR 9:015. Registration of motor vehicle dealers and manufacturers.

601 KAR 9:020. Demonstrator tag limitation.

601 KAR 9:060. Commercial vehicle(s) registration plates.

601 KAR 9:065. Exempt devices.

601 KAR 9:085.Procedures for becoming a certified motor vehicle inspector.

601 KAR 9:095. Information entered into the automated vehicle information system (AVIS).

Department of Highways

Maintenance

603 KAR 3:080. Advertising devices. (Repeals 603 KAR 3:060.) (Deferred from August)

EDUCATION, ARTS AND HUMANITIES CABINET

Department of Education

Bureau of Learning Results Services

Assistance and Intervention Services

703 KAR 3:060. Procedures for determining rewards and sanctions.

Office of Learning Programs Development

Office of Learning Support Services

704 KAR 7:090. Homeless children education program.

704 KAR 7:120. Home or hospital instruction. (Amended After Hearing) (Deferred from July)

Education Professional Standards Board

704 KAR 20:120. Emergency certification.

Office of Education for Exceptional Children: Exceptional and Handicapped Program

707 KAR 1:061. Repeal of existing regulations. (Repeals 707 KAR 1:041, 1:051, 1:052, 1:053, 1:054, 1:055, 1:056, 1:057, 1:058, 1:059, 1:059, 1:060, 1:070, 1:080.) (Amended After Hearing) (Deferred from July)

707 KAR 1:160. Free appropriate public education. (Amended After Hearing) (Deferred from July)

707 KAR 1:170. Identification of children and youth with disabilities. (Amended After Hearing) (Deferred from July)

707 KAR 1:180. Due process procedures. (Amended After Hearing) (Deferred from July)

707 KAR 1:190. Evaluation. (Amended After Hearing) (Deferred from July)

707 KAR 1:200. Eligibility of children and youth with disabilities. (Amended After Hearing) (Deferred from July)

707 KAR 1:210. Individual education programs. (Amended After Hearing) (Deferred from July)

707 KAR 1:220. Placement in the least restrictive environment. (Amended After Hearing) (Deferred from July)

707 KAR 1:230. Delivery of services. (Amended After Hearing) (Deferred from July)

707 KAR 1:240. Confidentiality of personally identifiable information. (Not Amended After Hearing) (Deferred from July)
707 KAR 1:250. Services in other programs. (Amended After Hearing) (Deferred from July)
707 KAR 1:260. Comprehensive system of personnel development. (Not Amended After Hearing) (Deferred from July)

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education

Management of the Kentucky Tech System
780 KAR 2:015. Administration of technical institutes. (Not Amended After Hearing)
Personnel System for Certified and Equivalent Employees
780 KAR 3:140. Certification and professional development requirements. (Not Amended After Hearing)
Instructional Programs
780 KAR 4:030. Technical degree requirements for postsecondary students. (Not Amended After Hearing)
Facilities and Equipment
780 KAR 7:035. Technical institute standards. (Not Amended After Hearing)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals

Surface Mining Safety Standards
805 KAR 3:010. Definitions.
805 KAR 3:090. Electricity.

KENTUCKY RACING COMMISSION

Thoroughbred Racing
810 KAR 1:031 & E. Intertrack simulcasting.
Harness Racing
811 KAR 1:015. Race officials.
811 KAR 1:055. Declaration to start; drawing horses.

CABINET FOR HUMAN RESOURCES
Department for Health Services

Health Services and Facilities
902 KAR 20:004 & E. Certificate of need process. (Not Amended After Hearing) (Deferred from July)

Department for Social Services

Day Care
905 KAR 2:001 & E. Definitions for Title 905 Chapter 2. (Amended After Hearing)
905 KAR 2:011 & E. Repealer of 905 KAR 2:010. (Not Amended After Hearing)
905 KAR 2:090 & E. Child care facility licensure. (Amended After Hearing)
905 KAR 2:100 & E. Certification of family child-care homes. (Amended After Hearing
905 KAR 2:110 & E. Child care facility provider requirements. (Amended After Hearing)
905 KAR 2:120 & E. Child care facility health and safety standards. (Amended After Hearing)
905 KAR 2:130 & E. Child care discipline. (Not Amended After Hearing)

Department for Medicaid Services

Medicaid Services
907 KAR 1:013 & E. Payments for hospital inpatient services.
907 KAR 1:022 & E. Nursing facility and intermediate care facility for the mentally retarded services.
907 KAR 1:025 & E. Payments for nursing facility and intermediate care facility for the mentally retarded services.
907 KAR 1:031 & E. Payments for home health services.
907 KAR 1:536 & E. Repeal of 907 KAR 1:480, 907 KAR 1:485, 907 KAR 1:490, 907 KAR 1:495 and 907 KAR 1:535.

OTHER BUSINESS

CABINET FOR HUMAN RESOURCES
Department for Social Services

Child Welfare
905 KAR 1:010. Application for permission to place or receive child.

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
2 KAR 2:010E

Emergency administrative regulation 2 KAR 2:010E is necessary in order to comply with the transition schedule set out in Section 87 of Senate Bill 7, enacted during the 1993 Extraordinary Session. This regulation establishes the form to be used to register as a legislative agent or employer of an agent. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on August 13, 1993.

JUDGE GEORGE E. BARKER, Chair

KENTUCKY LEGISLATIVE ETHICS COMMISSION

2 KAR 2:010E. Legislative agent or employer registration statement.

RELATES TO: KRS 6.666(6) to (13), 6.807
STATUTORY AUTHORITY: KRS 6.666(5)
EFFECTIVE: August 12, 1993
NECESSITY AND FUNCTION: KRS 6.807 requires each legislative agent and employer to file an initial registration. This administrative regulation establishes the registration statement.

Section 1. The registration form required by KRS 6.807 shall be mailed to the Kentucky Legislative Ethics Commission, Room 318, Capitol Annex, Frankfort, Kentucky 40601.

Section 2. (1) The "Initial Legislative Agent/Employer Registration Statement (KLEC 7/93)" is incorporated by reference.
(2) This document may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, Capitol Annex, Room 318, Frankfort, KY 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE GEORGE E. BARKER, Chair
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 12, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
101 KAR 2:100E

This emergency regulation is necessary to bring the regulations governing leave for public employees in the unclassified service into compliance with federal law and regulations which will take effect on August 5, 1993. The Family and Medical Leave Act of 1993, PL 103-3 and the recently published federal regulations (29 CFR Part 829) require public and private employers of more than fifty employees to meet minimum standards in granting employees leave for certain personal and family-related reasons. This emergency regulation is designed to modify classified service regulations to conform to the federal requirements and to clarify the relationship between utilization of sick and other forms of leave and the Sick Leave Sharing Program mandated by KRS 18A.197. This emergency regulation shall be replaced by an ordinary administrative regulation amendment. The ordinary administrative regulation amendment was filed with the Regulations Compiler on August 3, 1993.

BRERETON C. JONES, Governor
LOWELL W. CLARK, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:100E. Leave regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.1976, 344.030, PL 103-3
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110, 18A.155, 344.030, PL 103-3
EFFECTIVE: August 3, 1993
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. The Family and Medical Leave Act of 1993 (PL 103-3) as implemented by 29 CFR Part 825 requires the granting of family leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Annual Leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, and each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

A full-time employee must have worked more than half of the workdays in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.
(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year, or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(10) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in paragraph (2) of this section, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency. The effective date of the separation shall be the last workday.

(11) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 2(2) of this regulation.

(12) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant or require the use of accrued sick leave with pay when an employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform the essential functions of his[~~/her~~] duties with or without reasonable accommodation. When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. It shall be the responsibility of the employee to advise the appointing authority of accommodations that may be necessary and to provide supporting medical evidence. [~~; if there is no such position available, the regulations pertaining to layoff apply.~~] An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority only if the appointing authority has been unable to place the employee in a vacant, budgeted position, with the same agency, for which the employee qualifies. The employee shall be given priority consideration for such vacant position, if he is capable of performing its essential functions with or without reasonable accommodation. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee in within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

(10) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon appointment and placed to their credit.

(12) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that Workers Compensation Benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Family Leave. (1) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family leave without pay. On the first day of January of each year thereafter every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding calendar year shall qualify for twelve (12) weeks of family leave without pay. Unused family leave shall not be carried over from year to year.

(2)(a) A week of family leave is the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family leave shall be used for calculating the employee's normal work week.

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family leave), the hours worked under the new schedule shall be used for calculating the employee's normal work week.

(3) An appointing authority shall grant family leave, upon the receipt of a completed application from an employee. The appointing authority shall require the employee to utilize accumulated sick, annual and compensatory leave prior to granting unpaid family leave, provided that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family leave shall be reduced by the amount of paid leave used. A completed application means the request form and the medical certification required by subsection (4) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable. Family leave shall be granted:

(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child under an agreement with an agency of the Commonwealth or other

state government. An appointing authority may require a couple in the employ of an agency to limit the total amount of family leave to twelve (12) weeks where leave is sought in connection with the birth, adoption or placement of a child;

(b) Within one (1) year of the birth of a child of the employee, adoption by the employee or placement with the employee of a foster child, for the care of such newborn, adopted, or foster child;

(c) To an employee to care for the employee's spouse, parent, child (including biological, adopted, step, or foster), or other family member of similarly close blood or legal relationship (who has resided with the employee for not less than thirty (30) days prior to application), if the spouse, child, parent or family member has a serious health condition. A child includes one who is over eighteen (18) years of age and who is incapable of self-care because of a mental or physical disability. A serious health condition is a condition which requires inpatient care or continuing treatment by a health provider which renders the employee incapable of performing the duties of the employee's position. Where inpatient care is not involved, the expected absence from work, or from school, or incapacity in performing other daily activities of a family member shall be for a period of more than three (3) days.

(d) An appointing authority shall grant family leave because of a serious health condition, of the employee, that makes the employee temporarily unable to perform the essential functions of his position.

(4)(a) The appointing authority shall require an employee granted family leave for a serious health condition to supply a certification, on a form prescribed by the commissioner, from a health care provider that includes a statement that the employee is needed to care for a family member, or, that the employee's presence would be beneficial to the family member. An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or family member shall be required to supply a certification from a licensed health care provider that such leave is medically necessary and the expected duration and schedule of such leave. A "health care provider" includes: doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, and nurse midwife, or certified Christian Science practitioner.

(b) If an employee submits a complete certification signed by the health care provider, the appointing authority shall not request additional information from the employee's health care provider. If the appointing authority has reason to doubt the validity of a medical certification the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(c) If the opinions of the employee's and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider. An appointing authority may require recertification of the need for family leave every thirty (30) working days.

(5) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill family member or for the employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

(6) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave or shall have been on family leave during the previous month subject to the following conditions:

(a) Any combination of work days and paid leave and family leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively;

(c) When an employee is unable to work, and elects to use family leave as the sole qualification for the state contributions for life insurance and health benefits, he shall utilize his family leave days consecutively.

(d) An employee who has exhausted paid leave and family leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(e) An employee who uses family leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family leave is exhausted, shall reimburse the Commonwealth for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the Commonwealth if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family leave under this regulation.

2. Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control are where a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of other circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or a parent's decision not to return to work to stay with a newborn child.

(f) An employee, on family leave, shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(7) At the conclusion of the family leave, an employee shall be restored to the same job that the employee held before going on leave. The employee shall be returned to the same shift or equivalent schedule. If special qualifications are required for a position and said qualifications have lapsed during the employee's leave, the employee may be reassigned to different duties and given a reasonable opportunity to fulfill the requirements after returning to work.

Section 4. Sick Leave Sharing Procedures. (1) Definitions.

(a) "Employee" means an employee in active payroll status. An

employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.

(b) "Immediate family" means the spouse, mother, father, son or daughter, or person of similarly close blood or legal relationship who has resided with the employee for not less than thirty (30) days prior to application.

(c) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee completely incapable of performing the essential duties of his job. The ten (10) consecutive days of leave required for eligibility may be leave with or without pay. Sick leave sharing shall not be authorized for mere convenience or employee preference.

(2) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(3) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(4) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.

(5) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(6) Donated sick leave shall be used on consecutive days except as provided by subsection (7) of this section. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(7) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors, on a pro rata basis unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(8) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, such leave shall not be available for use by the recipient.

(9) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(10) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

Section 5. [3.] Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding [plaintiff]. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 6. [4.] Compensatory Leave. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of the Fair Labor Standards Act. An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years of employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off when practicable. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "nonexempt" shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 7. [5.] Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 8. [6.] Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 9. [7.] Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a

period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

Section 10. [~~8.~~] Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

LOWELL W. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: August 3, 1993
FILED WITH LRC: August 3, 1993 at 2 p.m.

STATEMENT OF EMERGENCY
101 KAR 3:010E

This emergency regulation is necessary to bring the regulations governing leave for public employees in the unclassified service into compliance with federal law and regulations which will take effect on August 5, 1993. The Family and Medical Leave Act of 1993, PL 103-3 and the recently published federal regulations (29 CFR Part 829) require public and private employers of more than fifty employees to meet minimum standards in granting employees leave for certain personal and family-related reasons. This emergency regulation is designed to modify classified service regulations to conform to the federal requirements and to clarify the relationship between utilization of sick and other forms of leave and the Sick Leave Sharing Program mandated by KRS 18A.197. This emergency regulation shall be replaced by an ordinary administrative regulation amendment. The ordinary administrative regulation amendment was filed with the Regulations Compiler on August 3, 1993.

BRERETON C. JONES, Governor
LOWELL W. CLARK, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 3:010E. Leave regulations for unclassified service.

RELATES TO: KRS 18A.155
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.155, 18A.197
EFFECTIVE: August 3, 1993
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for the unclassified service persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. In practice, the leave regulations (101 KAR 2:100) which apply to merit system employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

Section 1. Annual leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, or each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

A full-time employee must have worked more than half of the workdays in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year, or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month. [~~except:~~

~~(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.~~

~~(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.~~]

(10) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 1(2) of this regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated annual leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency. The effective date of the separation shall be the last workday.

(11) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 1(2) of this regulation.

(12) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except an emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when the employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority may return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month. [~~except:~~

~~(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.~~

~~(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.~~]

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

(10) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon appointment and placed to their credit.

(12) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that Workers' Compensation Benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Family Leave. It shall be the responsibility of the appointing authority to administer family leave in compliance with the Federal Family and Medical Leave Act of 1993 and regulations promulgated thereunder found in 29 CFR Part 825. Each employee in a nonexempt, nonpolicy making position shall be entitled to family leave as set out in 101 KAR 2:100, Section 3.

Section 4. Sick Leave Sharing Procedures. (1) Definitions.

(a) "Employee" means an employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.

(b) "Immediate family" means the spouse, mother, father, son or daughter, or person of similarly close blood or legal relationship who has resided with the employee for not less than thirty (30) days prior to application.

(c) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee completely incapable of performing the essential duties of his job. The ten (10) consecutive days of leave required for eligibility may be leave with or without pay. Sick leave sharing shall not be authorized for mere convenience or employee preference.

(2) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(3) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of

receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(4) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.

(5) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(6) Donated sick leave shall be used on consecutive days except as provided by subsection (7) of this section. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(7) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors, on a pro rata basis unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(8) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, such leave shall not be available for use by the recipient.

(9) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(10) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

Section 5. [3.] Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding [plaintiff]. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 6. [4.] Compensatory Leave and Overtime. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of this section and the Fair Labor Standards Act. An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off if the use of such time does not unduly disrupt the operations of the agency. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "nonexempt" shall be paid at one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7)(a) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(b) An employee in a policy making position shall be paid for all accrued compensatory leave, not to exceed 200 hours, only upon termination from the unclassified service. An employee who reverts to a position in the classified service or an employee who resigns one day and is employed the next day shall retain his accrued compensatory leave in the receiving agency.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 7. [5.] Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 8. [6.] Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 9. [7.] Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service, or for other purposes that are deemed to be in the best interests of the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this

regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed ~~on~~ leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month. [~~except:~~

~~(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.~~

~~(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.~~]

Section 10. [~~8.~~] Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

LOWELL W. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: August 3, 1993
FILED WITH LRC: August 3, 1993 at 2 p.m.

STATEMENT OF EMERGENCY
301 KAR 2:044E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because insufficient time precludes timely effectiveness of the administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
DON R. McCORMICK, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:044E. Taking of migratory wildlife.

RELATES TO: KRS [~~150.010,~~] 150.015, 150.025, 150.170, 150.300, [~~150.305,~~] 150.320, 150.330, 150.340, 150.360, 150.603
STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.170, 150.320, 150.340, 150.360 [~~150.025~~]
EFFECTIVE: July 30, 1993
NECESSITY AND FUNCTION: In accordance with KRS 150.015, this administrative regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this administrative regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates where appropriate and add provisions governing use of steel shot.

Section 1. Seasons. Migratory birds in the section shall only be taken during the seasons listed.

(1) Doves: September 1 through September 30; October 9 [~~10~~] through November 1 [~~2~~]; December 4 [~~November 28~~] through December 9 [~~3~~].

(2) Woodcock: October 16 [~~17~~] through December 19 [~~20~~].

(3) Common snipe: September 15 [~~16~~] through October 29 [~~30~~] and November 25 [~~26~~] through January 25, 1993.

(4) Wood duck and teal (blue-winged, green-winged and cinnamon teal): September 15 [~~16~~] through September 19 [~~20~~].

(5) Virginia and sora rails, common moorhen and purple gallinule: September 1 through November 9.

Section 2. Bag and Possession Limits. The following bag and possession limits shall apply to all migratory birds listed in this section.

(1) Doves: bag limit fifteen (15) per day and thirty (30) in possession.

(2) Woodcock: bag limit five (5) per day and ten (10) in possession.

(3) Common snipe: bag limit eight (8) per day and sixteen (16) in possession.

(4) Virginia and sora rails: bag limit twenty-five (25) per day, singly or in aggregate and twenty-five (25) in possession.

(5) Common moorhen and purple gallinules: bag limit fifteen (15) per day singly or in aggregate and thirty (30) in possession.

(6) Wood duck and teal: bag limit four (4) per day of which not more than two (2) may be wood ducks and possession limit of eight (8) of which not more than four (4) may be wood ducks.

(7) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(8) The above species (except doves) dressed in the field, or being prepared for transportation, shall have one (1) fully feathered wing or head attached to the bird for identification purposes.

Section 3. Shooting Hours. The following shooting hours shall apply to all migratory birds listed in this section.

(1) Doves: from 11 a.m. until sunset during the period September 1 through September 30 and October 9 [10] through November 1 [2]; from sunrise to sunset during the period December 4 [November 28] through December 9 [3].

(2) Common snipe, woodcock, Virginia and sora rails, purple gallinule and common moorhen: from one-half (1/2) hour before sunrise to sunset.

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

Section 4. Falconry Hunting. The wildlife species listed in this administrative regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits shall apply to falconry hunting.

Section 5. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this administrative regulation shall apply to the following areas:

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

(a) Doves: September 1 through September 30; and October 9 [10] through October 13 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.

(b) Woodcock: seasons closed.

(c) Common snipe: September 15 [16] through October 13.

(d) Virginia and sora rails, purple gallinule and common moorhen: September 1 through October 13.

(e) Wood duck and teal: Same as statewide.

(f) For paragraphs (a) through (e) of this subsection, areas designated by signs are closed to hunting.

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

(a) Doves: September 1 through September 30; and October 9 [10] through October 13 only.

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

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

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

(a) Doves: September 1 through September 30; and October 9 [10] through October 13 only.

(b) Woodcock: seasons closed.

(c) Common snipe: September 15 [16] through October 13.

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

(a) Doves: September 1 through September 24 [30] and December 4 [1] through December 9 [3] only.

(b) Woodcock: December 1 through December 19 [20] only.

(c) Common snipe: September 15 [16] through September 24 [25] and December 1 through January 25, 1993.

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

(a) Doves: postwide from September 1 through September 30, October 9 through November 3, and December 4 through 9. [25 and November 28 through December 3. On designated areas from September 26 through September 28; October 10 through November 2.]

(b) Woodcock: postwide from November 25 [26] through December 17 [11. On designated areas only from December 12 through December 20].

(c) Snipe: postwide from September 15 [16] through September 24 [25], November 25 [26] through December 11 and January 2[, 1993] through January 24 [25, 1993]. On designated areas only from December 10 [12] through December 31 [20].

(d) September wood duck and teal: September 19 [17 through 20] only. [Hunting permitted during these permits in designated areas only.]

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

(a) Doves: September 1 through September 30; and October 9 [10] through October 13 only.

(b) Wood duck and teal: September 15 [16] through September 19 [20].

(7) Grayson Lake Wildlife Management Area. All migratory bird hunters shall [must] check in and out daily at designated check stations.

(8) Yatesville Lake Wildlife Management Area. All migratory bird hunters shall [must] check in and out daily at designated hunter check stations.

(9) Closed areas.

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

(b) Migratory [Waterfowl] bird hunting is prohibited on the following areas on Grayson Lake: within the no wake zone at the dam site marina, from the shores of Camp Webb and the State Park and on Deer Creek Fork of Grayson Lake.

(10)(a) The department shall set dove hunter density limits for fields on wildlife management areas after considering the:

1. Terrain of the fields;
2. Topography of the fields;
3. Providing for approximately forty (40) yards between hunters.

(b) Strategically located signs shall be posted in fields advising hunters:

1. Of recommended hunter densities; and
2. That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(c) Any person behaving in an unsafe or uncooperative manner shall be required to leave the premises.

Section 6. Waterfowl Stamp Requirements. Those hunting ducks during the experimental September duck season shall possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

Section 7. Use of Steel Shot. Only steel shot shall be possessed and used by hunters when taking or attempting to take waterfowl statewide.

(1) Prohibition of lead shot for dove hunting. Lead shot shall not be used for the taking of doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms and Westvaco Wildlife Management Areas.

(2) Possession of lead shot shells.

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

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

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: June 15, 1993
FILED WITH LRC: July 30, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
301 KAR 2:260E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because insufficient time precludes timely effectiveness of the administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
DON R. MCCORMICK, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:260E. Crow hunting season.

RELATES TO: KRS 150.015, 150.105, 150.170, 150.175, 150.235, 150.330, 150.340, 150.600, 150.630, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.105, 150.170, 150.175, 150.340, 150.600, 150.630
EFFECTIVE: July 30, 1993
NECESSITY AND FUNCTION: This administrative regulation pertains to seasons for the taking of crow. The framework of this administrative regulation falls within the season guidelines prescribed by the United States Fish and Wildlife Service. The function of this administrative regulation is to provide for the prudent taking of crows within reasonable seasonal restrictions based upon an adequate supply.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit, or anchored, stationary, or drifting boat from which hunting occurs.

(2) "Decoy" means any type of visual device used to entice birds into shooting range.

(3) "Call" means any type of auditory device used to attract crows into shooting range.

(4) "Depredation" means any act committed by crows which would result in a damage or economic loss of ornamental or shade trees, agricultural crops, livestock, or wildlife, or when crows are concentrated in such numbers as to constitute a health hazard or other nuisance.

Section 2. Season. Crows shall be taken only during the period 1 September through 12 November and 9 January through 28 February. Persons taking or attempting to take crows must have a valid hunting license in possession.

Section 3. Shooting Hours. One-half (1/2) hour before sunrise to sunset.

Section 4. Use of Mechanical and Electronic Attracting Devices. Mechanical and electronic attracting devices for crow hunting may only be used during the open season defined in Section 2 of this administrative regulation.

Section 5. Acts of Depredation. Crows observed committing or about to commit acts of depredation may be taken year round; however, persons attempting to take depredating crows shall not use blinds, decoys, calls or other lures to attract birds into shooting range during the closed season.

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: June 15, 1993
FILED WITH LRC: July 30, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
301 KAR 3:030E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because insufficient time precludes timely effectiveness of the administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
DON R. McCORMICK, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 3:030E. Year-round season for some birds and animals.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.330, 150.360, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025, 150.170, 150.360
EFFECTIVE: July 30, 1993
NECESSITY AND FUNCTION: This administrative regulation pertains to the open season for unprotected species of wild birds and wild animals. [~~Since all wildlife is protected unless declared unprotected,~~] This administrative regulation is necessary to establish the species that can be hunted year-round, and to insure that only those species [~~declared~~] unprotected (except crow) may be taken by the use of hand, or mouth, mechanically or electronically operated calling or attracting devices. The function of this administrative regulation is to furnish sport and recreation while utilizing wildlife species that sometimes create a nuisance or a health hazard. This administrative regulation enacts a closure for hunting some species in early November. The purpose of this amendment is to remove hunting restrictions imposed by this administrative regulation from November 1 to midnight on the day of deer gun season closure so that the issue may be handled in other species specific season administrative regulations.

Section 1. The following species of wild birds and wild animals may be taken, pursued, possessed or transported all year except as stated in Section 3 of this administrative regulation, by any person possessing a valid hunting license: coyote, woodchuck, [~~crow,~~] English sparrow and starling.

Section 2. Unprotected wild animals. All species of moles, mice, rats, shrews, terrestrial invertebrates, snake and lizards, except those which may be protected as rare or endangered species under the provisions of 301 KAR 3:061, are unprotected and may be taken without possessing a hunting license. All other wild birds and wild

animals are protected except during open season and as specified by other administrative regulations.

Section 3. Closed season. There shall be a closed season on all species of wild birds and wild animals, protected or unprotected, unless opened by other administrative regulations, from November 1 to midnight on the day of the closure of statewide deer gun season, except that coyotes may be taken during this period by deer hunters, only as specified in administrative regulations 301 KAR 2:047, 301 KAR 2:111 and 301 KAR 2:170. This does not prohibit tenants residing on the land, nor landowners from killing wildlife which is causing damage to persons or property on their land.

Section 4. Except as otherwise provided by administrative regulation, only those birds and animals listed in Section 1 of this administrative regulation may be taken by the use of hand or mouth calling or attracting devices, or mechanically or electronically operated calling or attracting devices during daylight hours only.

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: June 15, 1993
FILED WITH LRC: July 30, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
415 KAR 1:115E

Corrective action is currently being performed at hundreds of underground storage tank sites in the Commonwealth of Kentucky. The performance of corrective action requires a minimum of technical competency and knowledge of applicable regulations, guidelines and industry practices. Corrective action must be performed by persons meeting those minimum qualifications. An emergency exists due to the need to establish a certification program for contractors performing corrective action to ensure that the necessary standards are met by persons responsible for the supervision of corrective action. An ordinary administrative regulation is not sufficient to comply with the purpose of this emergency regulation since it cannot be implemented in a timely manner. It is necessary that sufficient time be allowed to provide for certification and adoption of this regulation as an emergency regulation shall allow that to proceed prior to the effective date of January 1, 1994. This regulation will be replaced by an ordinary administrative regulation to be filed with the Legislative Research Commission.

BRERETON C. JONES, Governor
ROBERT LOGAN, Commissioner

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:115E. Contractor certification.

RELATES TO: KRS 224.60-110, 224.60-130
STATUTORY AUTHORITY: KRS 224.60-130
EFFECTIVE: August 13, 1993
NECESSITY AND FUNCTION: KRS 224.60-130 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation sets forth the criteria for obtaining certification from the commission to be eligible to contract to perform corrective action for a release from an underground petroleum storage tank, and to be eligible to receive reimbursement or payment from the fund. This administrative regulation is necessary to set minimum standards for determining technical competency and proficiency in the performance of corrective action, and to determine financial capability through proof of insurance.

Section 1. Definitions. Except as defined in this section, the terms in this regulation shall have the same definition as in KRS 224.60-115 or 415 KAR 1:050.

(1) "Certified contractor" means an individual certified by the commission as qualified to engage in the performance or supervision of corrective action at a facility in the event of a release from a petroleum storage tank system.

(2) "Company" means a person other than an individual engaged in the business of performing corrective action for a release from a petroleum storage tank system who employs one (1) or more certified contractors.

(3) "Participation in" means direct and substantial involvement in each aspect of corrective action, including site characterization, preparation of site investigation reports, preparation of proposed corrective action plan, and implementation of a corrective action plan approved by the cabinet.

(4) "Supervise" means being physically on site and having the authority and responsibility for the direction of employees engaged in performing corrective action at a facility in the event of a release from petroleum storage tank system, and having the ability to exercise independent judgement and direct the activities of employees and subcontractors in the performance of corrective action to achieve compliance with the administrative regulations of the cabinet.

Section 2. Applicability. (1) Effective January 1, 1994, no costs for actions performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund unless the corrective action is performed or supervised by an individual who is certified by the commission, and the corrective action is performed in compliance with the administrative regulations of the cabinet set forth in 401 KAR Chapter 42.

(2) The commission shall not reimburse costs of corrective action incurred after January 1, 1994, unless the corrective action is performed or supervised by an individual that has been certified pursuant to this administrative regulation.

(3) Certified contractors shall perform or supervise corrective action, including but not limited to, site checks, site investigations, and preparation of corrective action plans, in accordance with the administrative regulations of the cabinet.

(4) To be eligible for reimbursement from the fund, the person who contracts to perform corrective action shall designate the certified contractor responsible for supervision of the corrective action prior to incurring costs by giving written notice to the owner or operator of the facility and the commission. If the certified contractor changes, a new notice shall be given.

Section 3. Application Requirements. (1) Each applicant for certified contractor shall meet all of the following requirements:

(a) Submit an application to the commission on the Certified Contractor Application form dated August, 1993, hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

(b) Submit verification of experience by participation in the performance of corrective action at facilities where a release occurred from a petroleum storage tank system;

(c) Complete the examination requirements of this administrative regulation; and

(d) Provide proof of financial capability to perform corrective action and to compensate third parties for bodily injury and property

damage caused by the certified contractor, or company employing the certified contractor, by submitting certificates of general liability insurance in the minimum amount of $1,000,000 and pollution liability insurance in the minimum amount of $100,000 per occurrence. The proof of financial capability shall be provided prior to the issuance of a certificate by the commission.

(2) The application shall be denied by the commission for any of the following:

(a) The applicant fails to provide the information required by the application form; or

(b) The applicant fails to comply with the experience requirements of this administrative regulation; or

(d) The applicant fails to successfully pass the examination required by this administrative regulation; or

(e) The applicant makes a misrepresentation or submits false information in the application; or

(f) The applicant fails to provide proof of the insurance coverage required by this section.

Section 3. Experience Requirements. (1) The individual making application shall demonstrate participation in the performance of corrective action at a minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.

(2) Technical training approved by the commission shall reduce the experience requirement of participation in the performance of corrective action to a minimum of four (4) facilities.

(3) A professional engineer registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

(4) A certified professional geologist registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

Section 4. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the commission in compliance with this section.

(1) The examination for certification shall be a written multiple choice examination covering all aspects of corrective action for a release from a petroleum storage tank system. The examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to performing corrective action where a release has occurred from a petroleum storage tank system.

(2) A minimum score of seventy-five (75) percent on the examination shall be considered passing.

(3) Any applicant who fails the examination shall not reapply within ninety (90) days.

(4) Examinations shall be given quarterly through January 1, 1995, and semiannually thereafter.

(5) An application shall be filed with the commission at least ten (10) days in advance of the testing date to take the examination.

(6) All examinations shall be graded and the applicants shall be notified within fifteen (15) days. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant by appointment.

(7) The commission shall furnish the applicant with instructions for taking the examination upon receipt of a completed application. Instruction sheets shall refer the applicant to appropriate laws, regulations and industry publications.

Section 5. Certification and Renewal Procedures. (1) The commission shall issue a certificate to each individual who successfully complies with this administrative regulation. The certificate shall be renewed annually.

(2) An application for renewal shall be submitted to the commission on the Certified Contractor Application for Renewal form dated August, 1993, hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

(3) A certified contractor shall submit proof of financial capability, as required by Section 3(1)(d) of this administrative regulation, at time of renewal, and shall demonstrate that the insurance coverage shall be effective for the following year.

(4) The renewal of a certificate shall be denied by the commission for any of the following:

(a) The applicant fails to provide the information required by the Certified Contractor Application for Renewal form.

(b) The applicant makes a misrepresentation or submits false information in the application for renewal; or

(c) The applicant fails to demonstrate the insurance coverage required by subsection (3) of this section; or

(d) The applicant failed to supervise a corrective action during the year prior to renewal; or

(e) The applicant fails to maintain a professional registration.

(3) An applicant denied a certification or a renewal may appeal the determination by requesting a hearing pursuant to 405 KAR 1:120.

(4) The commission may require that a certified contractor take and pass a written examination to renew a certification if there has been a significant change in the laws, codes or industry recommended practices with respect to performing corrective action since the date of original certification.

Section 6. Revocation or Suspension of Certification. A certificate issued pursuant to this regulation may be suspended or revoked by the commission for the following:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated any provision of this regulation or any required federal, state or local regulation, code or standard relating to corrective action; or

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to perform corrective action in violation of standards of the State Fire Marshall or the cabinet;

(3) The certified contractor obtained the certification through fraud or misrepresentation.

(4) The certified contractor fails to perform a corrective action in a manner consistent with generally acceptable professional standards.

(5) The certified contractor fails to maintain general liability insurance as required by Sections 3(1)(d) and 5(3) of this administrative regulation.

Section 7. Nonaffiliation with Laboratory. The certified contractor, or company employing the certified contractor, and any of his or her subcontractors is prohibited from using a laboratory for environmental analytical work which is affiliated with the underground petroleum tank owner or operator, prime contractor, private contractor, or subcontractor for that particular site.

Section 8. This regulation shall become effective January 1, 1994.

ROBERT LOGAN, Chairman
APPROVED BY AGENCY: August 11, 1993
FILED WITH LRC: August 13, 1993 at 10 a.m.

STATEMENT OF EMERGENCY
810 KAR 1:031E

The Kentucky Revised Statutes allow the Kentucky Racing Commission to require information from those who submit applica-

tions to operate a racetrack. Historically these requirements, already in the existing administrative regulations, are geared toward the renewal process for existing racetracks. This regulation will provide comprehensive requirements that will not only benefit the Racing Commission, but ensure that an applicant that does not already have a track will consider all the various topics incidental to operating a racetrack which is especially important when there is no past experience to go on. The date for the award of 1994 dates is September 1, 1993 and the routine process by which regulations are promulgated will not enable this regulation to be in place without the emergency provision. An ordinary regulation will be filed as of noon July 15, 1993 to provide the permanent replacement for the emergency version. Without the implementation of this emergency regulation, the commission and applicants for 1994 dates will not have the benefit of these expanded guidelines.

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

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission

810 KAR 1:031E. Intertrack simulcasting.

RELATES TO: KRS 230.300
STATUTORY AUTHORITY: KRS 230.300(1)
EFFECTIVE: July 20, 1993
NECESSITY AND FUNCTION: The Kentucky Racing Commission is required to license all racing associations by KRS 230.300. This regulation is necessary to establish criteria to be considered when an association is requesting dates for the first time or when an association is requesting dates and does not yet have a completed facility.

Section 1. An application for race dates by a person, partnership, corporation, or other entity that has never been licensed to conduct live races within the Commonwealth shall submit the following information in addition to any other information required by other statutes and regulations. The information in this regulation shall also be required for any previous licensee who relocates his track or requests race dates without a completed facility.

Section 2. Identification. (1) Applicant.
(a) Name;
(b) Address;
(c) Business telephone number.
(2) Individual to whom the commission may make inquiry who is authorized to make the representations contained in the application on applicant's behalf:
(a) Name;
(b) Position;
(c) Address;
(d) Business telephone number;
(e) Authorized signature.
(3) Attach evidence of authority to act on behalf of applicant acknowledged by notary public as an exhibit.
(4) The applicant shall provide the name, business address, and the telephone number for the applicant's representatives for:
(a) Legal services;
(b) Accounting services;
(c) Banking and finance.

Section 3. Ownership and Control. The application for live race dates shall contain the following information regarding the disclosure of ownership and control:
(1) The type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other.
(2) If the applicant is an individual, the applicant's legal name and address, whether applicant is a United States citizen, Kentucky resident, any aliases, and business names currently used by the applicant. Attach copies of Kentucky and federal tax returns for the past five (5) years as an exhibit.
(a) List all businesses and business entities owned in whole or in part or operated by the applicant.
(3) If the applicant is a corporation:
(a) The applicant's full corporate name and any trade name currently or formerly used by the applicant.
(b) The name of the state in which incorporated.
(c) The location of the applicant's principal place of business.
(d) The date the applicant commenced doing business in Kentucky and, if the applicant is incorporated outside Kentucky, attach a copy of the applicant's certificate of authority to do business in Kentucky as an exhibit.
(e) Attach a certified copy of the applicant's articles of incorporation, a good-standing certificate or certificate of existence for each jurisdiction in which the applicant is licensed to do business, dated not earlier than the year in which the application is made, the applicant's bylaws, and federal and state (Kentucky, and any other state where applicant's principal place of business is located) corporate tax returns for the past five (5) years or since incorporation, if formed within such five (5) year period attach as an exhibit.
(f) The general nature of the applicant's business, summarizing the business activities that the applicant has engaged in within the past five (5) years.
(g) Whether the applicant is publicly held within the meaning of the rules and regulations of the United States Securities and Exchange Commission ("SEC").
(h) The classes of stock of the applicant. As to each class: the number of shares authorized, issued, and outstanding; par value per share, issue price, current market price, or fair market value, number of shareholders, terms, preferences, rights, and privileges, must be disclosed. Rights should include dividend rights, voting rights, liquidation rights, preemptive rights, conversion rights, and redemption provisions.
(i) The terms of any voting trust in which any stock may be held and the name, address, class of stock, and number of shares held in such voting trust.
(j) The terms of any proxy by which any stock is held, the holder of the proxy and the name, address, class of stock, and number of shares for all such stock held by proxy.
(k) If the applicant has any other obligations, options, or securities authorized or outstanding which bear voting rights, either absolutely or upon any contingency, the nature thereof, face or par value, exercise price, and expiration date, number of units authorized, number of outstanding, and conditions under which they may be voted.
(l) The names and addresses, in alphabetical order, of each director and officer of the applicant. As to each director and officer as of the application date, the number of shares or other securities held directly or indirectly and the percentage and ownership of each class of stock, including stock options, subscription rights, units, and any other obligations or securities must be disclosed.
(m) The names and addresses, in alphabetical order, of each record and beneficial holder, as of the date of the application, of shares, stock options, subscription rights, units, or other obligations or securities of the applicant, whether debt or equity and whether voting or nonvoting. As to each such holder, the number and class or type or securities and percentage of ownership must be disclosed.
(n) State whether five (5) percent or more of the applicant's assets, or whether any of the applicant's securities have been pledged as security for any debt. Explain fully, by stating names and addresses of parties holding security interests or promissory notes from the applicant and the stockholders, where the stock is pledged as security, and include a copy or any agreements creating the

security interests as an exhibit.

(o) Whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and SEC rules and regulations have been met in connection with registration and issuance of applicant's securities, if applicable. Attach copies of most recent registration statement, annual report, quarterly report, and any other periodic report filed with the last year with the SEC as an exhibit.

(p) Whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation or any other jurisdiction other than Kentucky in which such filings are required have been met or whether an exemption from such registration has been relied on. Attach a copy of most recent registration statement or notice of exemption, if any, filed with the securities regulator in that jurisdiction as an exhibit.

(q) Whether the securities registration requirements of the Commonwealth of Kentucky or requirements for an exemption therefrom have been met. If they have not, the applicant must disclose the reasons why. Attach copies of all securities filings made with the Kentucky Secretary of State, Securities Division, during the past five (5) years, as an exhibit.

(r) If the applicant was organized as a corporation within the past five (5) years, furnish the following information: the names of the individuals who formed the corporation; the nature and amount of anything of value received or to be received by each individual, directly or indirectly, from the applicant; and the nature and amount of assets, services, or other consideration therefore received or to be received by the applicant.

(s) List all parent corporations of an applicant, if applicable, showing basis of control and as to each parent, the percentage of voting securities owned or other basis of control by any such parent corporations.

(t) A financial statement of the applicant showing the applicant's net worth, as prepared and certified by a certified public account in accordance with sound accounting principles for the past five (5) fiscal years, or for the fiscal years since the formation of the applicant is formed within such five (5) year period as an exhibit.

(u) List all businesses, whether corporations, partnerships, joint ventures or other types of entities owned or operated by any entity holding or owning more than one (1) percent of the applicants outstanding stock.

(4) If the applicant is an organization other than a corporation:

(a) The applicant's full name and any trade names currently or formerly used by the applicant.

(b) The jurisdiction of organization of the applicant.

(c) The date the applicant commenced doing business in Kentucky.

(d) The location of the applicant's principal place of business.

(e) Attach certified copies of any agreements creating or governing the applicant and a good-standing certificate or certificate of existence for each jurisdiction in which such applicant if licensed to do business if available, dated not earlier than ten (10) days prior to the date of this application, and a financial statement of the applicant showing the applicant's net worth, as certified by a certified public account in accordance with sound accounting principles for the past five (5) fiscal years, or from the fiscal years since the formation of the applicant if formed within such five (5) year period as an exhibit.

(f) Attach copies of the applicant's federal and state (Kentucky, and any other state where applicant's principal place of business is located) tax returns for the past five (5) years, or since formation if formed within such five (5) year period as an exhibit.

(g) The general nature of the applicant's business, summarizing the business activities that the applicant has engaged in within the past five (5) years.

(h) The names and addresses, in alphabetical order, of any officers, directors, partners, members, trustees and beneficiaries, other organizations or entities or any other persons who have or share policy making authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, whether absolute or contingent in the applicant.

(i) The names and addresses, in alphabetical order, of any individual or other entity holding any record or beneficial ownership interest, including options, as of the date of the application, whether absolute or contingent in the applicant. As to each, the applicant must disclose the nature and extent of the interest.

(5) If a nonindividual record or beneficial holder of an ownership or other voting interest in the applicant is identified pursuant to subsections (3)(l) or (m) or (4)(h) or (i) of this section, the applicant shall disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest in that nonindividual holder. The disclosure required by those clauses shall be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in the applicant are so identified.

(6) Whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant shall disclose the identity of the controlling entity and a description of the nature and extent of control.

(7) Whether the applicant controls, directly or indirectly, to any extent or any manner, any other entity. If so, the applicant shall disclose the identity of such entity and a description of the nature and extent of its control and ownership.

(8) Copies of any agreements or understandings which the applicant or any individual or entity identified pursuant to this part has entered into regarding ownership, operation, management, or sponsorship or applicant's facility. As to each such agreement or understanding, the names, in alphabetical order, addresses, and descriptions of business of all persons, corporations, or entities with which the applicant has contracted or reached an understanding, and a copy of any written agreement or understanding must be disclosed. Attach as an exhibit.

(9) Whether the applicant, any director, partner, officer, other policy maker, or holder of a direct or indirect record or beneficial ownership interest or other interest or control in the applicant has held or holds or has been denied a license or permit issued by any other governmental authority to own or to operate a pari-mutuel facility. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and/or termination or denial.

(10) Copies of any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant. Attach as an exhibit.

(11) Identify all loans made by the applicant. Describe the terms of the loan, including the name of the borrower, the amount of the loan and the nature and value of the collateral and terms.

(12) Describe any pending legal proceedings to which the applicant or any of its subsidiaries or parent corporation is party or which any of their property is subject. Include the name of the jurisdiction in which the proceedings are pending, the date instituted, and the principal parties involved.

(13) List remuneration paid by the applicant, if any, during the preceding twelve (12) months to:

(a) Each director of the applicant.

(b) Each officer of the applicant.

(c) Any other persons whose direct remuneration was more than $10,000.

(14) Attach a statement from the Kentucky Revenue Cabinet that there are no pari-mutuel taxes or other obligations owned by the applicant to the Commonwealth of Kentucky or any of its subdivisions or agencies as an exhibit.

(15) Attach a statement from the county treasurer of the county in which the applicant proposes to conduct horse racing meetings that there are no real or personal property taxes owned by any of the

principals seeking the permit as an exhibit.

(16) Attach a statement of obligations that are owned or being contested, including salaries, purses, entry fees, laboratory fees and debts owned to vendors and suppliers as an exhibit.

(17) If the racing site or facility is leased a copy of the lease must be filed with the commission as an exhibit. If another corporation or partnership owns or controls five (5) percent or more of the stock of a corporation that files the information required above, that corporation or partnership shall file the same information.

Section 4. Disclosure of Character Information. The applicant must disclose whether the applicant or any other person or entity identified in Part II of this application has:

(1) Been charged in any criminal proceeding other than routine traffic violations, such as, but not limited to, a felony of fraud, misrepresentation, theft, larceny, embezzlement, tax evasion, robbery, burglary, bribery, extortion, jury tampering, obstruction of justice, perjury, an antitrust violation or conspiracy to commit any of the foregoing. If so, the applicant must disclose the date charged, court, disposition of charge, and sentence, if any.

(2) Been a party to or is currently a party in any civil proceeding, except for any divorce actions, such as, but not limited to, engaging in an unfair or anticompetitive business practice, a securities violation, or false or misleading advertising. If so, the date of commencement, court, circumstances, date of decision, and result.

(3) Had a pari-mutuel racing, gambling, or other business license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances, date of decision, and result.

(4) Been accused in an administrative or judicial proceeding of any state of violation of a statute or rule relating to a pari-mutuel racing or gambling. If so, the applicant must disclose the date of commencement, circumstances, date of decision, and result.

(5) Commenced in any state an administrative or judicial action against a governmental regulator of pari-mutuel racing or gambling. If so, the applicant must disclose the date of commencement, circumstances, date of decision, and result.

(6) Been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result.

(7) Failed to satisfy and judgment, decree or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and the circumstances.

(8) Been delinquent in filing a tax report required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

Section 5. Financial Disclosure. The applicant shall disclose the following with regard to the financial resources:

(1) An audited financial statement certified by a certified public accountant acceptable to the commission, reflecting the applicant's current assets, including investments in affiliated entities, loans, and advances receivable and fixed assets and current liabilities, including loans, and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity. Attach as an exhibit.

(2) Equity and debt sources of funds to develop, own, operate, manage, and sponsor a pari-mutuel wagering facility. The following shall be identified and documented:

(a) With respect to each source of equity contribution, identification of source, amount, form method of payment, nature and amount of present commitment, and actions with the applicant will take to obtain more certain commitments and commitments for additional amounts.

(b) With respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more commitments and commitments for additional amounts. Attach requested documentation as an exhibit.

(3) Identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or any other cause.

Section 6. Financial Disclosure; Operation. The applicant shall disclose the following information regarding the operation of racing meetings at the facility:

(1) All financial projections disclosed shall be prepared by a certified public accountant, with the applicant providing an information sheet detailing the background of the certified public accountant who provided the financial projections as an exhibit. The certified public accountant shall outline any and all assumptions made or used in the preparation of the financial projections.

(2) The applicant shall disclose the financial projections for each of the first five (5) racing years. On a separate schedule, the applicant shall state the minimum number of racing days' programs the applicant will require to meet all financial obligations. The disclosure must include:

(a) The projections for each item below should be accompanied by detailed support documentation listing the source(s) from which the projection is derived to the extent that each projection can be calculated from such documentation. Explain the reason for any difference between the source(s) of support documentation and the projection.

1. Average daily attendance;
2. Average daily handle;
3. Average per capita wager;
4. Admissions to the track, including ticket price;
5. Purses (excluding horsemen's contribution);
6. Pari-mutuel tax;
7. Breakage;
8. Outstanding tickets;
9. Bond;
10. Totalizator equipment expenses;
11. Real estate taxes;
12. State taxes;
13. Federal taxes;
14. Payroll;
15. Stewards/judges reimbursement;
16. Test barn assistants reimbursement;
17. Insurance;
18. Membership expense;
19. Operating supplies and services;
20. Repair and maintenance;
21. Legal and audit expense;
22. Takeout deductions retained by the permit holder for operating expenses;
23. Parking volume, fees and revenues;
24. Concessions, gift shop, and program sales;
25. Debt service;
26. Security expenses;
27. Utilities;
28. Others (list separately).

(3) The following profit and loss elements:

(a) Total revenue, including projected revenues from admissions, parking, concessions, gift and program operations.

(b) Total operating expenses, including projected expenses for:

1. Purses;
2. Pari-mutuel tax;
3. Breakage;
4. Outstanding tickets;
5. Bond;
6. Totalizator;
7. Real estate tax;
8. State taxes;

9. Federal taxes;
10. Local taxes;
11. Admission tax;
12. Sales tax;
13. Payroll;
14. Stewards, judges reimbursement;
15. Racing Commission reimbursement;
16. Insurance;
17. Cost of concessions;
18. Operating supplies and service;
19. Repairs and maintenance;
20. Legal and audit;
21. Security;
22. Advertising and promotion;
23. Others (list separately).

(c) Nonoperating expenses, including projected expenses for debt service, facility depreciation on and identification of method used, and equipment depreciation and identification of method used.

(4) Projected cash flow, including assessment of:

(a) Income, including equity contributions, debt contributions, interest income, operating revenue.

(b) Disbursements, including real estate, improvements, equipment, debt service, operating expense, initial organizational expenses.

(5) Projected balance sheets as of the first day of racing and as of the first day of racing for each of the first five (5) racing years thereafter, setting forth:

(a) Current, fixed, and other noncurrent assets;

(b) Current and long-term liabilities;

(c) Capital accounts.

Section 7. Physical Plant Design Requirements. The application shall contain the following information regarding the physical plant:

(1) The address of the facility, identifying the county and municipality.

(2) The actual legal description of the site.

(3) A statement of whether the site is owned or leased by the applicant; the name and address of the titleholders to the real property and names and addresses of all persons holding mortgages or other security interests in the property guaranteed by a title company authorized to do business in the state. Attach a copy of the title guarantee as an exhibit.

(4) A site map which reflects current and proposed highways and streets adjacent to the facility and their access to the track. Attach a copy of a professionally prepared map as an exhibit.

(5) A description of any architect(s) and/or engineer(s) that the applicant has contracted with to design or to consult with respect to the design of the facility, and the experience of such architect(s) and/or engineer(s) in designing horse racing facilities. Attach copies of any agreements, proposals and certificates of insurance as an exhibit.

(6) A description of any contractor(s), subcontractor(s), project manager(s), project engineer(s), or any other persons, firms or corporations with whom the applicant has contracted or proposes to contact with for the construction of the facility, giving:

(a) Specific information about the experience of each such contracting party, with respect to major projects performed in the past;

(b) With respect to each such contracting party, where the nature of the work requires the performance thereof to be secured by a bond, written confirmation from a recognized surety company that such contracting party can obtain a performance bond sufficient to cover the contract anticipated to be undertaken by such contracting party. Attach requested documentation as an exhibit.

(7) A description of the individual(s) who will oversee the design and construction of the racing surface and the experience of such individual(s) in the design and construction of race tracks.

(8) The applicant shall submit detailed track dimensions, including the following dimensions and specifications:

(a) Circumference;
(b) Width;
(c) Banking;
(d) Length of stretch;
(e) Distance between the finish line and first turn;
(f) Type of base and surface (including the percentage of material used and the depth of each layer);
(g) Winterization method for the surface;
(h) Location of the starting chutes and gaps;
(i) Rail.

(9) The applicant shall submit with the information requested in subsection (6) through (15) of this section at least one (1) copy of architect's plans for renderings, showing detail of any proposed construction as an exhibit.

(10) The applicant shall describe the size and type on construction of the grandstand, including:

(a) Total seating capacity detailing heated and air-conditioned areas: heated and air-conditioned areas for ITW purposes shall accommodate 250 percent of the projected average ITW attendance as used in the revenue estimates;

(b) Reserved and nonreserved seating capacity;
(c) Indoor and outdoor seating capacity;
(d) Configuration of the grandstand seating;
(e) Configuration and location of the pari-mutuel facilities;
(f) Configuration and location of the concession facilities;
(g) Number and location of men's and women's restrooms;
(h) Drinking fountains;
(i) Medical facilities available to patrons;
(k) Provisions for the handicapped;
(l) Description of public pedestrian traffic patterns.

(11) The applicant shall describe the parking facilities, detailing:

(a) Access to parking from surrounding streets and highways;

(b) Road surface on parking areas;

(c) Number and location of parking spaces, distinguishing between public and other;

(d) Proposed parking prices, including the type of parking and the fees to be charged;

(e) Distance between parking and the grandstand;

(f) A street map of the area, showing the relationship of parting to surrounding streets and highways;

(g) Public road improvements that must be completed to provide adequate access to the facility;

1. Who will perform the road improvements;
2. When the improvements will be completed.

(12) The applicant shall describe the facilities to accommodate horses by detailing the following:

(a) The location, number, design, dimensions, and construction of barns at the facility, including:

1. The location, number, dimensions, and construction of stalls, including floors;
2. The location, number, dimensions, and construction of stalls for stakes horses, overnights, and ship-ins;
3. The location, number, dimensions, and construction of tack rooms;
4. Washing facilities;
5. Ventilation and insulation plans;
6. The location and description of temperature and fire equipment in the barns;
7. Location of restrooms in barns.

(b) The location, design, dimensions, and construction of the detention barn at the facility, including:

1. Distance from detention barn to track and paddock;
2. Location, number, dimensions, and construction of sampling stalls;
3. Placement of viewing ports on each stall;
4. Location, number, dimensions of wash stall with hot and cold water and drains;

5. Availability of video monitors;
6. Location and description of working ring;
7. Communication services;
8. The office and facilities of the commission veterinarian(s) and staff.

(c) The location, design, dimensions, and construction of the paddock at the facility, including:
1. Number of stalls;
2. Height from the floor to the lowest point of the stall;
3. Public address and communication services;
4. Provisions for a walking ring;
5. The office or other facilities for the identifier and paddock judge.

(d) The location, design, dimensions, and construction of the jockeys' and drivers' quarters at the facility, including:
1. Location of the quarters in relation to the paddock;
2. Description of the changing areas;
3. Listing of equipment to be installed;
4. Communication services.

(13) Whether a horsemen's kitchen in the stable area is to be provided, and if so, include the location, design, dimensions and construction.

(14) Whether living quarters for stable employees are required to be provided, and if so, include the number of units, location, design dimensions and construction.

(15) A description of the pari-mutuel totalizator system, and approximate location of patrons' windows and cash security areas, and a description of the equipment, including:

(a) The provider's address, business telephone number, and a copy of any service contracts, if available. Attach requested contracts as an exhibit;

(b) A complete description of the totalizator equipment including the methods of showing the general public changes in odds and payoffs, and a description of the back-up system;

(c) Approximate number and type of totalizator machines and back-up machines;

(d) Proposed mutuel staffing plan;

(e) Number and location of information windows;

(f) Procedures to handle customer complaints.

(16) A description of the facilities for owners of animals and other racing personnel.

(17) A description of the height, type of construction, and materials of the perimeter area restricted fencing, including whether there is a clear zone at least four (4) feet wide around the outside of the perimeter fence.

(18) A description of security equipment and the location at the racetrack, exclusive of fencing, including the provider of equipment, if known.

(19) A description of office space and work areas for the commission.

(20) The applicant shall provide any agreement or proposals with concessionaires, setting forth arrangements for dining, concessions, and other facilities for patrons, including the design and locations. Attach as an exhibit.

(21) A description of the type of film patrol and video equipment to be used and the provider, including:

(a) Number of towers;

(b) Locations of each tower;

(c) Communications between the towers and master;

(d) Location of viewing room;

(e) Back-up procedure in the event a mechanical failure occurs to the primary video equipment;

(f) Video tape storage.

(22) A complete description of starting, timing, and photo-finish equipment, including the provider.

(23) A complete description of the telephone and other communications systems, including the provider.

(24) A complete listing and description of the track maintenance equipment.

(25) The applicant shall provide the proposed admission fee schedule for the racetrack, including but not limited to:

(a) Grandstand;

(b) Reserved grandstand;

(c) Grandstand box;

(d) Clubhouse;

(e) Reserved clubhouse;

(f) Clubhouse box.

(26) A description of access to the facility by public transportation, specifics of the type of transportation and schedule, road maps of the area, including pick-up and drop-off points. Attach requested documents as an exhibit.

Section 8. Construction Cost Estimate. The applicant shall disclose, with regard to development, the following information:

(1) The total cost of construction of the facility, distinguishing between fixed costs and estimated costs.

(2) The identification of the following costs for the facility, distinguishing between fixed costs and estimated costs, including, but not limited to:

(a) Facility design;

(b) Land acquisition;

(c) Site development, including:

1. Survey;
2. Soil and site work;
3. Utilities;
4. Parking lot;
5. Transportation access;
6. Track.

(d) Facility construction, including:

1. Grandstand;
2. Track;
3. Security and fire equipment;
4. Stables;
5. Detention barn;
6. Paddock;
7. Jockey/drivers quarters;
8. Tote board;
9. Horsemen's kitchen;
10. Living quarters.

(e) Equipment acquisition;

(f) Interim financing;

(g) Organization, administrative, accounting, and legal;

(h) Permanent financing;

(i) Marketing.

(3) Documentation of fixed costs.

Section 9. Construction Schedule. The applicant shall provide a construction schedule proposed for the facility, including the date the project will be fully operational and the number of months after the permit is granted that each of the following activities will be commenced or completed:

(1) Acquisition of land;

(2) Solicitation of bids;

(3) Awarding of construction contracts;

(4) Construction commencement;

(5) Completion of construction;

(6) Facility occupancy;

(7) Training of staff;

(8) Commission inspection of the facility for public and racing readiness.

Section 10. Facility Security and Public Safety. The application shall include the following information regarding security and public safety:

(1) The applicant shall provide a statement whether the security personnel are or will be direct or contractual employees.

(2) The applicant shall provide an organizational chart and complete job description of the security force, including each level of security and the location to which each level will be assigned.

(3) The applicant shall state whether the security force is or will be bonded. If the security force is bonded, attach a certified copy of any bond document and a statement of the amount and when the applicant will satisfy the bond conditions as an exhibit.

(4) The application shall provide a description of the applicant's security plan for the racing meeting and any other periods, including:

(a) The number and development of security personnel;

(b) The perimeter;

(c) The stable compound;

(d) Pari-mutuel wagering facilities;

(e) The money room;

(f) The coordination between the racetrack facility security and local law enforcement personnel, including approximate response time;

(g) The coordination between the racetrack facility security and the commission;

(h) Video monitoring equipment, including the type and location;

(i) Alarms, including the type and location:

(j) The testing or detention barn or paddock for horses;

(k) The stable area;

(l) The parking lot;

(m) The policy for admittance of persons to restricted areas at the facility;

(n) The control of traffic.

(5) The application shall provide a description of any emergency procedures, including ambulance, first aid or evacuation, and the approximate response time of local emergency medical services.

(6) The application shall describe a racetrack fire and safety policy, including:

(a) The standard operating procedures of security personnel to ensure the fire safety of all areas of the facility;

(b) The electrical safety devices, including number, type, uses, and locations;

(c) Inspections and inspection schedules designating the local or state governmental unit which will be responsible for all fire, health, and sanitation inspections and local requirements;

(d) Feed and bedding storage;

(e) Smoking;

(f) Sleeping quarters, if applicable;

(g) Barns and stable areas;

(h) Grandstand;

(i) Special patron areas, including clubhouse;

(j) Administrative offices;

(k) Type and location of firefighting equipment;

(l) Coordination between the track and the local fire department, including the approximate response time.

Section 11. Governmental Requirements and Actions. The application shall disclose and document the status of governmental action relating to the following:

(1) The city street, county road, and state highway improvements necessary to ensure adequate access to the applicant's facility, including:

(a) Estimate cost of improvements;

(b) The status and estimated date of completion;

(c) The identity of the party or parties responsible for the cost of the improvements;

(d) The proportionate distribution of the cost of the improvements if more than one (1) party is responsible for the cost.

(2) The sewer, water, and other public utility improvements necessary to serve the applicant's facility, including:

(a) The estimated cost of improvements;

(b) The status and estimated date of completion;

(c) The identity of the party or parties responsible for the cost of improvements;

(d) The proportionate distribution of the cost of the improvements if more than one (1) party is responsible for the cost.

(3) Any required government approvals for financing improvements under the subsections (1) and (2) of this section, and any required government approvals for its development, operation, management, and sponsorship, including:

(a) A description of the approval, unit of government, date and documentation. Attach requested documentation as an exhibit.

(b) A statement whether public hearings were held, including when and where the hearings were conducted or why the hearings were not held.

(c) A statement whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval, and estimated date of approval.

(d) A copy of all ordinances or other actions of local government necessary for the proposed construction.

(4) A statement whether the applicant is in compliance with all statutes, resolutions, development, ownership, operation, management, and sponsorship of racing meetings at the facility. If the applicant is not in compliance, the applicant shall disclose the reason.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: July 13, 1993
FILED WITH LRC: July 20, 1993 at 11 a.m.

STATEMENT OF EMERGENCY
902 KAR 55:015E

Emergency regulation 902 KAR 55:015E is necessary in order to provide conformity with federal regulation 21 CFR 1308.11. In order to continue enforcement of abusable controlled substances as scheduled by federal regulations the Cabinet for Human Resources is required to implement this administrative regulation. An ordinary administrative regulation will not suffice due to the effective date required by the U.S. Drug Enforcement Administration. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed with the Regulations Compiler on or before August 15, 1993.

BRERETON C. JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 55:015E. Schedule I substances.

RELATES TO: KRS ~~[Chapter]~~ 218A.010 to 218A.050, 21 CFR 1308.11

STATUTORY AUTHORITY: KRS 194.050, 218A.020, 218A.040, 218A.250

EFFECTIVE: July 20, 1993

NECESSITY AND FUNCTION: KRS 218A.020 authorizes the Cabinet for Human Resources to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.040 and applicable federal regulations, the Cabinet for Human Resources designates the substances set forth in this regulation as Schedule I controlled substances.

Section 1. Opiates. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those

specified by KRS 218A.050, any of the following opiates, including their isomers, optical isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphacetylmethadol (except Levo-alphacetylmethadol (LAAM));

(2) Acetyl-alpha-methylfentanyl, N-[1-(1-methyl-2-phenethyl)-4-piperidinyl [~~phenyl) ethyl 4 piperidyl~~]]-N- phenylacetamide;

(3) [~~(2)~~] Alpha-methylfentanyl, N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(4) [~~(3)~~] Alpha-methylthiofentanyl, N-[1-[~~(1-~~]methyl-2-(2-thienyl) ethyl-4-piperidinyl] [~~piperidyl~~]-N- phenylpropanamide;

(5) [~~(4)~~] Benzylfentanyl, N-[1-benzyl-4-piperidyl]-N-phenylpro-pan-amide;

(6) [~~(5)~~] Beta-hydroxyfentanyl, N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenypropanamide [~~phenyl)ethyl 4 piperidyl] N-phenylpropanamide~~];

(7) [~~(6)~~] Beta-hydroxy-3-methylfentanyl, N-[1-(2-hydroxy-2phen-ethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide [~~N-[3-methyl-1-(2-hydroxy-2-phenyl) ethyl 4 piperidyl] N-phenylpropanamide~~];

(8) [~~(7)~~] Difenoxin;

(9) [~~(8)~~] 3-Methylfentanyl, N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;

(10) [~~(9)~~] 3-methylthiofentanyl, N-[3-methyl-1-(2[~~-2~~]-thienyl) ethyl-4-piperidinyl [~~piperidyl~~]]-N-phenylpropanamide;

(11) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);

(12) [~~(10)~~] Para-fluorofentanyl, (N-(4-fluorphenyl)-N-[1-(2-phen-ethyl)-4-piperidinyl]propanamide;

(13) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);

(14) [~~(11)~~] Thenylfentanyl, N-[1-(2-thienyl) methyl-4-piperidyl]N-phenylpropanamide;

(15) [~~(12)~~] Thiofentanyl, N-phenyl-N-[1-[~~(2)~~ (2-thienyl)ethyl-4-piperidinyl]-propanamide [~~piperidyl] N-phenylpropanamide~~]; and

(16) [~~(13)~~] Tilidine.

Section 2. Opium Derivatives. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, optical isomers, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:

(1) Drotebanol; and

(2) Etorphine (except hydrochloride salt). [~~1 methyl 4 phenyl 4 propionoxypiperidine (MPPP);~~

~~(3) 1 (2 phenylethyl) 4 phenyl 4 acetyloxyperidine (PEPAP).~~]

Section 3. Hallucinogenic Substances. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomer" includes the optical position and geometric isomers):

(1) alpha-ethyltryptamine (alpha-ethyl-1H-indole-3-ethanamine,3-(2-aminobutyl)indole);

(2) 4-bromo-2, 5-dimethoxy-amphetamine (4-bromo-2,5-DMA,4-bromo-2,5-dimethoxy-alpha-methylphenethylamine);

(3) [~~(2)~~] 2, 5-dimethoxyamphetamine (2, 5 DMA);

(4) 2,5-dimethoxy-4-ethylamphetamine (DOET);

(5) [~~(3)~~] Ethylamine analog of phencyclidine (N-ethyl-1-phenylcy-clohexylamine, cyclohexamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, PCE);

(6) 3,4-methylenedioxymethamphetamine (MDMA);

(7) [~~(4)~~] 4-methoxyamphetamine (PMA, 4-methoxy-alpha-methyl-phenethylamine, paramethoxyamphetamine);

(8) [~~(5)~~] 3,4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(9) [~~(6)~~] N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3,4-(methylenedioxy) Phenethylamine, N-hydroxy MDA);

(10) [~~(7)~~] Parahexyl (Synhexyl, 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran);

(11) [~~(8)~~] Pyrrolidine analog of phencyclidine (1-(1-phenylcyclo-hexyl)-pyrrolidine, PCPy, PHP); [~~and~~]

(12) [~~(9)~~] Thiophene analog of phencyclidine (1-(1-(2-thienyl) cyclohexyl) piperidine, TCP, TPCP); and

(13) 1-[1- (2-thienyl) cyclohexyl]pyrrolidine (TCPy).

Section 4. Depressants. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone; and

(2) Methaqualone [~~(2-methyl 3-o tolyl 4(3H)- quinazolinone)~~].

Section 5. Stimulants. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (aminoxaphen, 2-amino-5-phenyl-2-oxazoline, 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(3) (±) cis-4-methylaminorex ((±) cis-4,5-dihydro-4methyl-5-phenyl-2-oxazolamine);

(4) N,N-dimethylamphetamine (N,N-alpha-trimethyl-benzeneethan-amine, [~~(N,N,alpha trimethylbenzene ethanamine,~~] N,N,alpha-trim-ethylphenethylamine), its salts, optical isomers and salts of optical isomers;

(5) N-ethylamphetamine;

(6) [~~(2)~~] Fenethylline; and

(7) Methcathinone (2-(methylamino) -propiophenone, alpha (methylamino) -propiophenone, alpha (methylamino) -propiophenone, 2-(methylamino) -1-phenylpropan-1-one, alpha-N-methylaminopropio-phenone, monomethylpropion, ephedrone, N-methylcathinone, methycathinone, AL-464, AL-422, AL-463 and UR1431) its salts, optical isomers and salts of optical isomers.

[~~(3) N ethylamphentamine;~~

~~(4) 4 methylaminorex (2-amino-4 methyl 5 phenyl 2 oxazoline);~~ and

~~(5) 3,4 methylenedioxymethamphetamine (MDMA).~~]

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 28, 1993
FILED WITH LRC: July 20, 1993 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:044E

This emergency administrative regulation is being amended to be consistent with the cabinet's new universal accounting system and reimbursement manual for community mental health centers, effective July 1, 1993. This action must be taken on an emergency basis to implement policy in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1993.

BRERETON C. JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:044E. Mental health center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.130, 42 USC 1396a-d
EFFECTIVE: July 28, 1993
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to services provided by Mental Health Centers for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program to both the categorically needy and the medically needy.

Section 1. Definition of Psychiatric Nurse. (1) For the purpose of providing Medicaid [~~Medical Assistance~~] Program reimbursable services, registered nurses employed by participating mental health centers shall be considered psychiatric or mental health nurses when they meet any of the following criteria:

(a) Master of Science in Nursing (MSN) with specialty in psychiatric/mental health nursing; additional experience is not required; or

(b) Graduate of a four (4) year nursing educational program, with a Bachelor of Science in Nursing (BSN) and with a minimum of one (1) year of experience in a mental health setting; or

(c) Graduate of a three (3) year nursing educational program (diploma graduate), and with a minimum of two (2) years of experience in a mental health setting; or

(d) Graduate of a two (2) year nursing educational program, with an Associate Degree in Nursing (ADN) and with a minimum of three (3) years of experience in a mental health setting; or

(e) Effective July 1, 1989, any level of education with American Nursing Association (ANA) certification as a psychiatric and mental health nurse.

(2) Notwithstanding the preceding, any registered nurse employed by a participating mental health center in Kentucky on June 30, 1981 shall be considered a psychiatric nurse if [~~so long as~~] their employment with the center continues, for the purpose of providing Medicaid [~~Medical Assistance~~] Program reimbursable services.

Section 2. Community Mental Health Manual. The Community Mental Health Manual specifies the conditions for participation, services covered, and limitations for the mental health center services component of the Medicaid Program. The Community Mental Health Manual dated July 1, 1993 is incorporated by reference in this administrative regulation and may be reviewed during regular working hours (8 a.m. to 4:30 p.m. Eastern Standard Time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. Covered Services. The following services provided by participating mental health centers shall be considered covered when rendered within Kentucky Medicaid [~~Medical Assistance~~] Program guidelines as shown in the Community Mental Health Manual:

(1) Inpatient services; [~~, as defined in 902 KAR 20:091, when a center based psychiatrist renders the service, or when the psychiatrist deems it appropriate for the psychologist (including psychological associates), psychiatric nurse, master degree social worker, or individuals with equivalent professional education (as determined by the cabinet) to provide therapy for the patient.~~]

(2) Outpatient services; [~~, as defined in 902 KAR 20:091, but not including the noncovered services listed in this section and Section 3 of this regulation, if rendered by a mental health professional from one (1) of the four (4) principal disciplines (psychiatrist, psychologist (including psychological associate), psychiatric nurse, or master degree social worker), or individuals with equivalent professional education (as determined by the cabinet). Services rendered by a staff member other than one of the above shall be covered only if the service is delivered in accordance with a plan of treatment approved by the psychiatrist when delivered under the supervision of a mental health professional from one (1) of the four (4) principal disciplines or an individual with equivalent professional education (as determined by the cabinet). Outpatient services include both on site and off site services.~~]

(3) Therapeutic rehabilitation services; [~~(partial hospitalization), as defined in 902 KAR 20:091, if:~~

~~(a) The psychiatrist is present in the therapeutic rehabilitation unit on a regularly scheduled basis (at least monthly) and assumes clinical responsibility for all patients; and~~

~~(b) The program has direct supervision by a psychiatrist, psychologist (psychological associate), psychiatric nurse, master degree social worker, or individuals with equivalent professional education (as determined by the cabinet).~~

~~(4) Detoxification services, when rendered by a center based psychiatrist in a detoxification unit.~~

~~(5) Psychological testing, if the tests are administered and evaluated by a licensed psychologist, certified psychologist, or psychological associate.~~]

(4) [~~(6)~~] Emergency services; and [~~, as defined in 902 KAR 20:091, if the eligible recipient is seen in an emergency situation by any professional or paraprofessional member of the mental health staff.~~]

(5) [~~(7)~~] Personal care home services. [~~, if rendered by a mental health professional from one (1) of the four (4) principal disciplines (psychiatrist, psychologist, psychiatric nurse, or master degree social worker) or individuals with equivalent professional education (as determined by the cabinet) to eligible recipients in personal care homes, and including resocialization and remotivation services rendered to personal care home groups, if group services are rendered.~~

~~(8) Diagnosis deferred, diagnostic category, limited to the initial three (3) visits.~~

~~(9) Speech disturbance, diagnostic category, only if provided by a psychiatrist or psychologist.~~

~~Section 3. Noncovered Services. The following mental health center services shall not be covered:~~

~~(1) Services of an educational or supervisory nature;~~

~~(2) Speech therapy;~~

~~(3) Alcohol and drug services;~~

~~(4) Consultation (except consultation among direct staff of the center);~~

~~(5) Collateral therapy for age twenty one (21) and over (except~~

~~that immediate family members may participate in joint therapy sessions when the client is present and the client's plan of care as approved by the psychiatrist requires that treatment modality);~~

~~(6) Residential treatment for alcoholism;~~

~~(7) Services rendered to residents or patients of nursing facilities; and~~

~~(8) Field trips, recreational and social activities.~~]

Section 4. The provisions of this administrative regulation shall be applicable for services provided on or after July 1, 1993 [~~1991~~].

Section 5. 907 KAR 1:370, Incorporated by reference of the Community Mental Health Services Manual, is repealed.

JANIE A. MILLER, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 20, 1993
FILED WITH LRC: July 28, 1993 at 10 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:045E

This emergency administrative regulation is being amended to provide for use of a new universal accounting system and reimbursement manual for community mental health centers (including provision of alternative home and community based services for the mentally retarded) which is to be used by all appropriate departments within the cabinet. Minor changes in developed of prospective rate setting for the centers are also made for improved cost effectiveness and efficiency. This action must be taken on an emergency basis to implement necessary administrative improvements and policy changes in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1993.

BRERETON C. JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:045E. Payments for mental health center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.325, 42 USC 1396a-d
EFFECTIVE: July 28, 1993
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for mental health center services.

Section 1. Mental Health Centers. Participating in-state mental health center providers shall be reimbursed as follows:

(1)(a) Payment rates for the rate year beginning July 1, 1991 shall be based on the following principles:

1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based on the latest available cost and statistical data from the mental health centers.

2. Costs used in setting the interim rates shall be trended to the beginning of the rate year and indexed for inflation to the end of the rate year.

3. Direct service costs shall be arrayed (the "interim" array) and the interim rate upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable, reasonable cost for each service unit or the upper limit, whichever is less.

5. A retrospective final settlement shall be made after the end of the rate year based on the fiscal year ending June 30, 1992 annual cost report. All costs shall be rearrayed (the final array) for the final settlement. For purposes of determining costs in excess of the upper limit, the upper limit shall be the higher of the maximum derived from the interim array or the final array.

6. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit based on the final array.

7. A funding adjustment of fifty-two (52) cents shall be added to the interim outpatient per unit rates, and the same funding adjustment (i.e., the same fifty-two (52) cents) shall be allowed as a part of the final outpatient per unit rates (without regard to upper limits) to improve compensation of service providers and encourage provision of additional services.

(b) Payment rates for the rate year beginning July 1, 1992 shall be based on the following principles:

1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based on mental health center cost reports submitted for the six (6) month period ending December 31, 1991.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation to the end of the rate year.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the number of outpatient units of service) shall be added to the interim rate (without regard to upper limits) to improve compensation of service providers and encourage provision of additional services.

7. The interim rate shall be adjusted to final prospectively determined rates based on the audited or desk reviewed annual cost reports for the period ending June 30, 1992 with the cost reports indexed for inflation, the upper limits previously determined remaining in effect, and the same funding adjustment allowed.

(c) Payment rates for rate years beginning [~~on or after~~] July 1, 1993 and July 1, 1994 shall be based on the following principles:

1. Final prospectively determined rates for the [~~nine (9)~~] direct service cost centers shall be set based on each mental health center's fiscal year ending June 30, 1992 audited annual cost report [~~for the prior year~~]; if the [~~an audited~~] cost report is not audited at the time of rate setting [~~available, the most recent unaudited annual cost report shall be the basis for~~] the rate shall be [~~with the rate~~] adjusted upon completion [~~as necessary at the time~~] of the audit [~~or desk review of the cost center used in setting the rate~~]. Costs shall be actual, reasonable, and allowable costs.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings

incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the total number of outpatient units of service) shall be added to the rate (without regard to upper limits) to improve compensation of providers and encourage provision of additional services.

(d) Payment rates for rate years beginning on or after July 1, 1995 shall be based on the following principles:

1. Final prospectively determined rates for the direct service cost centers shall be set based on each mental health center's audited annual cost report for the prior year; if the cost report is not audited at the time of rate setting, the rate shall be adjusted upon completion of the audit or desk review. Costs shall be actual, reasonable, and allowable costs.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the total number of outpatient units of service) shall be added to the rate (without regard to upper limits) to improve compensation of providers and encourage provision of additional services.

(2) Payment amounts shall be determined by application of the "Cabinet for Human Resources Community Mental Health - [/] Mental Retardation [~~Center~~] Reimbursement Manual," dated July 1, 1993 [~~(revised May 1, 1992)~~], which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Cabinet for Human Resources Community Mental Health - [/] Mental Retardation [~~Center~~] Reimbursement Manual may be reviewed during regular working hours of [(] 8 a.m. to 4:30 p.m. Eastern time [)] in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed $20,000 [~~15,000~~] total valuation annually (unless the excess cost is considered as compensation to the management personnel), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.

[~~(4) The reimbursable departmental cost centers are on site psychiatrist, on site individual, off site psychiatrist, off site individual, group, personal care, therapeutic rehabilitation, inpatient hospital psychiatrist, and inpatient hospital other.~~]

Section 2. Implementation of Payment System. (1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.

(2) Overpayments discovered as a result of audits shall be settled in the usual manner, i.e., through recoupment or withholding.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than ninety (90) [~~sixty (60)~~] days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet. [~~Notwithstanding this general requirement, the provider need not make available (for purposes of determining Medicaid payment amounts) staff notes or treatment records which show treatment details for non-Medicaid covered services; for these services, the information required shall be limited to a case summary sheet or listing which shows, at a minimum, the type of service provided, the staff member who provided the service, the date of the service, and appropriate identifying information relating to the patient.~~]

(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this administrative regulation for services not covered by 907 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the [~~cabinet's~~] "Cabinet for Human Resources Community Mental Health - [/] Mental Retardation [~~Center~~] Reimbursement Manual."

Section 4. Reimbursement of Out-of-state Providers. Reimbursement to participating out-of-state mental health center providers shall be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

JANIE A. MILLER, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 28, 1993
FILED WITH LRC: July 28, 1993 at 10 a.m.

STATEMENT OF EMERGENCY
908 KAR 2:060E

This emergency administrative regulation is being amended to provide for use of a new universal accounting system and reimbursement manual for community mental health centers (including provision of alternative home and community based services for the mentally retarded) which is to be used by all appropriate departments within the cabinet. Minor changes in the development of prospective rate setting for the centers are also made for improved cost effectiveness and efficiency. This action must be taken on an emergency basis to implement necessary administrative improvements and policy changes in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1993.

BRERETON C. JONES, Governor
FONTAINE BANKS, JR., Secretary

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

908 KAR 2:060E. Mental health and mental retardation [~~MH/MR~~] manuals for plan and budget instructions, billing instructions, and reimbursement guidelines.

RELATES TO: KRS 210.370 to 210.460
STATUTORY AUTHORITY: KRS 210.440 to 210.450

EFFECTIVE: July 28, 1993

NECESSITY AND FUNCTION: The Cabinet for Human Resources is [~~empowered and~~] directed by KRS 210.370 to 210.460 to allocate available funds to mental health/mental retardation boards in accordance with approved plans and budgets. KRS 210.440 and 210.450 authorize the Secretary for Human Resources to promulgate policies and regulations as to the operations, budgets and expenditures of community programs and to require reporting management and financial programs as necessary to carry out the purposes of KRS 210.370 to 210.460.

Section 1. Annual Plan and Budget Instructions. The Cabinet for Human Resources incorporates [~~hereby adopts~~] the "Annual Plan and Budget Instructions, July 1, 1984" by reference. community mental health and [/] mental retardation boards shall [~~will~~] follow these instructions when preparing and submitting the annual plan and budgets to the cabinet. The manual includes [~~, but is not limited to,~~] the following: rate and allocation sheets, client service definitions and descriptions, fiscal plan, waiver request, letter of assurance, addenda, and regional data packet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane [~~275 East Main Street~~], Frankfort, Kentucky 40601 [~~40621~~].

Section 2. DMH/MRS, Program, Policies and Billing Instructions Manual. The Cabinet for Human Resources incorporates [~~hereby adopts~~] the July 1, 1985 edition of the "DMH/MRS Program Policies and Billing Instructions Manual," [~~as administrative regulation~~] by reference. The manual relates to [~~, but is not limited to~~] the following: billing and reimbursement instructions for mental health, mental retardation, and substance abuse client priorities, program service definitions, reporting requirements, monitoring procedures, and contract amendment procedures. The instructions contained shall be followed by those community mental health and [/] mental retardation boards contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane, [~~275 East Main Street,~~] Frankfort, Kentucky 40601 [~~40621~~].

Section 3. Cabinet for Human Resources [~~Title XIX and DHS Funding~~] Community Mental Health and [/] Mental Retardation Reimbursement Manual, July 1, 1993 [~~1984~~]. The Cabinet for Human Resources incorporates [~~hereby adopts~~] this manual [~~as administrative regulation~~] by reference. This manual relates to[~~, but is not limited to~~] the following: scope of services, requirements and limitations of participation, method and principles of reimbursement. The manual shall be adhered to by those community mental health and [~~/~~] mental retardation boards contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane, [~~275 East Main Street,~~] Frankfort, Kentucky 40601 [~~40621~~].

[~~Section 4. Summary of Amendments. (1) In relation to Section 1 of this regulation pertaining to annual plan and budget instructions, the term "centers" is changed to "boards" and the term "health" is changed to "mental health and mental retardation."~~

~~(2) In relation to Section 2 of this regulation pertaining to the DHS "Program Policies and Billing Instructions Manual," the manual is stricken in its entirety and a new manual entitled July 1, 1985 Edition of the "DMH/MRS Program Policies and Billing Instruction Manual" is substituted in lieu thereof. Provision is made in the new manual for the driving under the influence (DUI) program policies, procedures and billing instructions. Also included within the new edition are changes pertaining to definitions of services, references to Title XX have been deleted, priorities section changed, and prevention program standards and guidelines added.~~

~~(3) In relation to Section 3 of this regulation pertaining to "Cabinet for Human Resources Title XIX and DHS Funding Community Mental Health/Mental Retardation Reimbursement Manual, July 1984" the term "centers" is changed to "boards" and the term "health" is changed to "mental health and mental retardation."~~]

DENNIS D. BOYD, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 22, 1993
FILED WITH LRC: July 28, 1993 at 10 a.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its August 2, 1993 meeting, unless otherwise noted.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended)

201 KAR 20:235. The prevention of transmission of HIV and HBV by nurses.

RELATES TO: 42 USC Section 300ee-2 note [~~PL 102-141, Section 633~~]

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY AND FUNCTION: 42 USC Section 300ee-2 note [~~PL 102-141, Section 633~~] requires each state to institute the guidelines issued by the United States Centers for Disease Control or guidelines which are equivalent to those promulgated by the Centers for Disease Control concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures. This regulation implements those guidelines for nurses.

Section 1. Definitions. (1) "HIV" means the human immunodeficiency virus.

(2) "HBV" means the hepatitis B virus.

(3) "Exposure-prone invasive procedure" means the digital palpation of a needle tip in a body cavity or the simultaneous presence of a nurse's finger and a needle or other sharp instrument or object in a poorly visualized or highly confined [~~an~~] anatomic site.

(4) "Universal precautions" means the appropriate use of hand and skin washing, protective barriers, care in the use and disposal of needles and other sharp instruments, and those other techniques recommended in current U.S. Centers for Disease Control Morbidity and Mortality Weekly Report, June 24, 1988, Volume 37, Number 24, which is hereby incorporated by reference. A copy may be inspected, **obtained** or copied at the board office during regular business hours. [~~guidelines.~~]

(5) "Nurse" means an advanced registered nurse practitioner, registered nurse or licensed practical nurse.

(6) "Invasive procedure" means entry into body tissues, cavities or organs.

(7) "Board" means Board of Nursing.

Section 2. Provisions for Nurses Generally. (1) All nurses shall adhere to universal precautions in their respective practices.

(2) Nurses who fail to adhere to universal precautions **shall be considered as** [~~are~~] acting in a manner inconsistent with the practice of nursing and shall be subject to disciplinary action pursuant to KRS 314.091. [~~Nurses shall comply with current U.S. Centers for Disease Control guidelines for disinfection and sterilization of reusable devices used in invasive procedures.~~

~~(3) All nurses who perform exposure-prone procedures should know their HIV antibody status.~~

~~(4) All nurses who perform exposure-prone procedures and who do not have serologic evidence of immunity to HBV from vaccination or from previous infection should know their hepatitis B surface antigen (HBsAg) status, and, if that is positive, should also know their hepatitis B e antigen (HBeAg) status.~~]

Section 3. Provisions for HIV and HBV Seropositive Nurses. (1) Nurses who perform exposure-prone invasive procedures and who know their status to be HIV seropositive or HBV seropositive in the absence of hepatitis B vaccination may seek counsel from the board. [~~Nurses who are HIV or HBV seropositive (and are HBeAg positive) shall not perform exposure prone procedures unless they have sought counsel from an expert review panel and have been advised under what circumstances, if any, they may continue to perform those procedures.~~]

(2) Upon the request of a nurse, the executive director of the board or his designee shall convene an expert review panel. The panel shall consist of the following:

(a) The nurse's personal physician or ARNP;

(b) An infectious disease specialist with expertise in the epidemiology of HIV and HBV transmission;

(c) A nurse with expertise in the procedures performed by the requesting nurse; and

(d) The state or local public health officer or his designee [~~Nurses who are HIV or HBV seropositive (and are HBeAg positive) shall report their status to the individual designated by the board to receive this information. This individual shall maintain the information as confidential and shall not release it except to the expert review panel or to a hearing panel, if one is required.~~]

(3) The executive director or his designee and the expert review panel shall follow the confidentiality requirements of KRS 214.625(5) and 61.878(1)(a). [~~The individual receiving the information shall convene an expert review panel. The panel shall consist of the following:~~

~~(a) The nurse's personal physician or ARNP;~~

~~(b) An infectious disease specialist with expertise in the epidemiology of HIV and HBV transmission; and~~

~~(c) A nurse with expertise in the procedures performed by the infected nurse.~~]

(4) After review of a particular case, the expert review panel shall offer counsel regarding under what circumstances, if any, the nurse may continue to perform exposure-prone invasive procedures. [~~The nurse who is HIV or HBV seropositive shall appear before the expert review panel. The panel shall issue an order to the nurse and to the individual designated by the board to receive the information. The order shall state under what circumstances, if any, the nurse may continue to perform exposure-prone procedures. The nurse may be represented by legal counsel and may present witnesses.~~]

(5) If the expert review panel determines that a nurse is not in compliance with its recommendations and that his continued practice poses a significant risk to patients, the expert review panel shall initiate the complaint procedure set forth in 201 KAR 20:161. [~~The expert review panel shall maintain the confidentiality of the information and order to the greatest extent possible. However, the panel may, in its discretion, require disclosure to patients or employers.~~

~~(6) Failure to comply with the order of the expert review panel shall result in initiation of the complaint procedure set forth in 201 KAR 20:161 and disciplinary action procedure set forth in 201 KAR 20:162.~~]

SUSAN J. HOCKENBERGER, President
APPROVED BY AGENCY: July 1, 1993
FILED WITH LRC: July 2, 1993 at 8 a.m.

COMPILER'S NOTE: The following administrative regulation was amended by the promulgating agency and the Interim Joint Committee on Education, and became effective on August 5, 1993.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Support Services
(As Amended)

704 KAR 4:020. Comprehensive school health.

RELATES TO: KRS 156.160, HJR 124 (1990 RS)
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt administrative regulations governing medical inspection, physical education and recreation, and other rules and regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children; and HJR 124 (1990 RS) directs the Cabinet for Human Resources, in conjunction with the Department of Education, to develop a policy to promote appropriate and early diagnosis and treatment of scoliosis by licensed members of the healing arts. This administrative regulation implements the duty of the State Board relative to medical inspections and the physical welfare and safety of public school children; and it formalizes the appropriate interagency agreement on scoliosis detection and treatment.

Section 1. School employee medical examinations shall be required as follows for the protection of the physical welfare and safety of the public school children.

(1) All local boards of education shall require a medical examination of each teacher upon initial employment which shall include a tuberculin skin test. All positive reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required medical examinations for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, each teacher shall submit to the local school superintendent a statement indicating his or her medical status.

(2) All local boards of education shall require upon initial employment and each year thereafter a medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and events related to such schools. The medical examination shall include test for hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. The initial examination shall include tests for tuberculosis and other items mandated by 702 KAR 5:080. All positive reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required medical examination for initial employment and any subsequent examinations, as may be required for positive tuberculin reactors, each bus driver shall submit to the local school superintendent a statement indicating his or her medical status. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and entitled, "Physical Examination Form," dated July 1990 (as required by 49 CFR 391.41), [~~Medical Examination Report for School Bus Drivers and Substitute School Bus Driver,~~"] which is incorporated herein by reference, and submitted to the local school superintendent.

(3) All local boards of education shall require a medical examination of each custodian, cafeteria worker, and other classified school employees not specifically covered by subsection (2) of this section upon initial employment. The medical examination shall include tests for tuberculosis, hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. All positive tuberculin reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required evaluation, each employee shall submit to the local school superintendent a statement indicating his or her medical status. Medical examinations shall be reported on forms prescribed by the State Department of Education and entitled, "Medical Examination of School Employees," dated January 1993, which is incorporated herein by reference.

(4) The local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to be examined for tuberculosis. The evaluation and any required treatment for tuberculosis infection shall be based upon the recommendations of the local board of health and the standards developed by the Cabinet for Human Resources.

(a) Any personnel exposed to infectious tuberculosis shall be tested and, if necessary, treated for tuberculosis infection according to the recommendation of the local board of health.

(b) In counties with high incidence rates for tuberculosis infection defined as equal to or greater than one (1) percent, the local board of health may, with the approval of the Cabinet for Human Resources, exercise its legal sanction to require more extensive testing for tuberculosis than outlined above.

Section 2. (1) Effective with the 1993-94 school year, all local boards of education shall require a medical examination of each child within six (6) months prior to[~~, or one (1) month following,~~] [~~his or her~~] initial admission to school. [~~Local school boards may extend this time not to exceed two (2) months.~~] [~~, and, effective with the 1992-93 school year,~~] A second examination shall be required within one (1) year [~~six (6) months~~] prior to entry into the sixth grade. **Local school boards may extend the deadline by which to obtain either medical examination, not to exceed two (2) months.** Both [~~The initial~~] medical examinations may be [~~,~~] performed and signed for by a physician, advanced registered nurse practitioner (ARNP), physician's assistant (PA), or by a health care provider in the early periodic screening diagnosis and treatment (EPSDT) programs. The medical examinations shall be reported on forms prescribed by the Department of Education and entitled, "School Medical Examination Form," January, 1993 [~~October 29, 1991~~], which is incorporated herein by reference, and shall include a medical history; record of immunizations and tuberculosis testing; assessment of growth and development and general appearance; physical assessment including hearing and vision screening; and recommendations to the school regarding health problems that may require special attention in classroom or physical education activities. Local school districts shall establish a plan for implementation and compliance required for [~~with~~] the sixth grade physicals. A valid immunization certificate shall be presented prior to school enrollment. [~~The second student physical may be performed and signed for by an advanced registered nurse practitioner (ARNP) or by a health care provider in the Early Periodic Screening Diagnosis and Treatment (EPSDT) Program and shall be reported on forms prescribed by the Department of Education and entitled, "School Medical Examination Form," October 29, 1991, which is incorporated herein by reference, and shall include the same medical information as described for the initial student physical.~~]

(2) All boards of education shall adopt a program of continuous health supervision for all school enrollees; supervision shall include scheduled, appropriate screening tests for vision, hearing and scoliosis. The need for any further tuberculin skin test shall depend on the risk of exposure of the child and prevalence of tuberculosis in the community, and the need is to be determined pursuant to KRS 214.034. Local spinal screening programs for scoliosis shall include:

(a) Training sessions for teachers or lay volunteers who will be doing the screening;

(b) Obtaining parental permission for scoliosis screening;

(c) Established screening times, at least in grades six (6) and eight (8) and appropriate procedures and referral criteria, with the Department of Education to provide technical advice on these areas;

(d) Mandated education of students regarding scoliosis screening; and

(e) Required referral of all children with abnormal screening results for appropriate diagnosis and treatment and follow-up on these referrals. Local referral and follow-up procedures shall include:

1. Notification of parents of students who need further evaluation by a physician;

2. Tracking referrals to determine whether [~~assure that~~] all children with abnormal screening results receive appropriate diagnosis and treatment; and

3. Reporting of data on screening, referral and follow-up tracking to the Department of Education.

(3) The Department of Education shall appropriately monitor the spinal screening and referral programs provided by local boards of education, provide consultation and technical assistance to local boards of education concerning spinal screening, referral and follow-up for appropriate diagnosis and treatment, and encourage local school systems to work cooperatively with local health departments and local Commission for Handicapped Children offices to plan, promote and implement scoliosis screening programs.

(4) An effective mechanism for referral and appropriate follow-up of any apparent abnormality noted by screening assessment or teacher observation shall be recorded on school health records within nine (9) weeks of screening program or detection of abnormality.

(5) Each school shall have emergency care procedures. The emergency care procedures shall include:

(a) First aid facilities, including provisions for designated areas for the child to recline;

(b) **A requirement that whenever children are present during school hours, there shall be at least one (1) adult present in the schools who is certified in a standard first aid course which includes CPR for infants and children;** [~~At least two (2) adults in each school, at least one (1) of whom shall be present in the school at all times during school hours and both of whom shall [who] have completed and been certified in a standard first aid course which includes CPR for infants and children;~~]

(c) Parents' telephone number, or a number at which parents can be reached;

(d) Name of family physician; and

(e) Means of transportation.

(6) Local boards of education shall require all vaccinations and immunizations and tuberculosis testing as required by law or regulations:

(a) Except as otherwise provided by law, all children shall be required to present a valid immunization certificate upon enrollment in school, and a valid up-to-date immunization certificate shall be on file for all children at all times. All children shall also present a tuberculin test certificate or the school medical examination form to the public or private school showing tuberculin skin test administration within one (1) year prior to initial enrollment in school. The governing body of private and public schools shall enforce the provisions of this subsection in accordance with the established laws.

(b) Children transferring into any school district shall comply with the above requirements.

Section 3. (1) Each elementary and secondary school shall initiate a cumulative health record for each pupil entering school. The [~~Such~~] record shall be maintained throughout the pupil's attendance. The [~~Such~~] record shall be uniform and shall be on forms prescribed by the Department of Education and entitled "Pupil's Cumulative Health Record," dated January 1993, which is incorporated herein by reference. The [~~Such~~] record shall include screening tests related to growth and development, vision and hearing; teacher observations of general appearance and behavior; and findings and recommendations of physician and dentist including immunization record. A follow-up by the proper health or school authorities shall be made on each defect noted and the result shall be recorded.

(2) Local school authorities shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. All boards of education shall, in relation to each school under its jurisdiction, provide and maintain a physical environment that is conducive to the health and safety of school children. It shall be the responsibility of all local boards of education to comply with current laws and administrative regulations applicable to all public buildings pertinent to health, sanitation, and safety. In accordance with current administrative regulations and standards by authorities having jurisdiction, it shall be the responsibility of all local boards of education to establish:

(1) An adequate supply of water of safe, potable, sanitary quality.

(2) A state-approved sanitary disposal of sewage, other water carried waste, and solid waste.

(3) Adequate toilet and lavatory facilities, including soap or detergent as well as towels or other methods for drying hands [~~in every school~~], and other sanitary fixtures.

(4) Adequate heating, lighting, and ventilation in all school buildings.

(5) Adequate facilities and equipment for cafeterias and lunchrooms.

(6) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment.

(7) Adequate first aid facilities.

(8) Adequate control of air pollutants.

(9) Universal precautions guidelines [~~in each school~~] compatible with Occupational Safety and Health Administration (OSHA) guidelines.

Section 5. Each board of education shall designate a person to serve as school health coordinator. The person designated shall meet the minimum qualifications required of this position. The school health coordinator shall work in cooperation with all school personnel, the local board of education, the State Department of [~~for Elementary and Secondary~~] Education, [~~and~~] the local health department, family resource and youth services centers and parents in planning, promoting, and implementing a school health services program that meets the administrative regulations adopted by the State Board for Elementary and Secondary [~~of~~] Education.

Section 6. Each local board of education shall require an annual medical examination of each child as a prerequisite for eligibility in interscholastic athletics. A local board of education may require the examination to be paid by the parent of the child.

Section 7. All forms incorporated herein by reference may be inspected, copied, and obtained from the Division of Student/Family Support Services, School/Community Resource Branch, Department of Education, 17th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 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 of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: April 14, 1993
FILED WITH LRC: April 15, 1993 at noon

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(As Amended)

803 KAR 2:310. Adoption of 29 CFR Part 1910.151-.153.

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 Chapter 29, Part 1910.151-.153 of the Code of Federal Regulations 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: 29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:

(1) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health.

(2) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and first aid supplies approved by the consulting physician, along with a signed list of these supplies, shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who while performing their duties, are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees.

(3) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid. First aid supplies approved by the consulting physician shall be readily available.

(4) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use. [~~(a)~~] **Beginning October 15, 1993,** such facilities shall comply with the provisions of the American National Standards Institute (ANSI) Z-358.1-1990, "Standard for Emergency Eyewash and Shower Equipment", which is incorporated by reference, with the following exceptions:

(a) [~~(b)~~] In remote areas where a person is visibly and audibly separated from coworkers, an audible or visible alarm shall activate to alert appropriate personnel when the unit is in use; or in the alternative, a two (2) way communication device shall be used. The alarm shall continue until the unit is no longer in use.

(b) The requirement that such facilities be tested according to the standard shall be changed from weekly to monthly.

[~~(c) Plumbed units shall deliver free flowing potable water at a comfortable temperature range (sixty (60) to ninety (90) degrees Fahrenheit).~~]

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.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: July 14, 1993
FILED WITH LRC: July 14, 1993 at 11 a.m.

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

902 KAR 8:040. Definition of terms applicable for the personnel program for local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
NECESSITY AND FUNCTION: KRS 211.170, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. The purpose of this administrative regulation is to provide for definitions of terms used in administrative regulations 902 KAR 8:050 through 902 KAR 8:140 that describe the various components of a personnel administration program applicable for local health departments established under the provisions of KRS Chapter 212.

Section 1. Definitions. As used in administrative regulations 902 KAR 8:050 through 902 KAR 8:140:

(1) "Agency" means a local health department established under the provisions of KRS Chapter 212, except for a health department in a county containing a city of the first class, an urban county health department, or an independent district health department.

(2) "Allocate" means assigning a position to an appropriate class on the basis of similarity of work and level of responsibility performed in the position.

(3) "Appeal" means the right, under the provisions of 902 KAR 8:110 to appear before the Local Health Personnel Advisory Council or a hearing officer appointed by the department and be heard on matters of discrimination or disciplinary actions, provided for under 902 KAR 8:050 through 902 KAR 8:140.

(4) "Appointing authority" means the board of health or other lawfully delegated individual authorized under KRS Chapter 212 to make appointments.

(5) "Available" means an individual on a register for a class of positions willing to accept appointment in specified areas to a particular position of that class.

(6) "Cabinet" means the Cabinet for Human Resources.

(7) "Certification of eligibles" means a list of eligibles issued by the Department for Health Services to the appointing authority of an agency certifying that the individuals meet the established minimum qualifications of the position, passed the required examination, and may be considered for employment.

(8) "Class" means a group of positions similar as to the duties performed; degree of supervision exercised or required; minimum requirements of training, experience or skill; and other characteristics.

(9) "Classified service" means employment subject to the terms of administrative regulations 902 KAR 8:050 through 902 KAR 8:140 except for:

(a) A health officer or a health department director employed under the provisions of 902 KAR 8:140; or

(b) An employee appointed on a seasonal, temporary, or emergency basis as described in administrative regulation 902 KAR 8:080.

(10) "Classification plan" means the system of assigning positions to individual classes based on the duties performed.

(11) "Compensation plan" means a series of salary ranges to which classes of positions are assigned so that classifications evaluated by the department as approximately equal may be assigned to the same salary range.

(12) "Compensatory time" means accumulation of leave time for time worked on an hour-for-hour basis in excess of thirty-seven and one-half (37.5) hours per week subject to the provisions of KRS Chapter 337 and the Fair Labor Standards Act, 29 USC 206.

(13) "Competitive examination" means a formal process of measuring the qualifications of applicants for employment or promotion.

(14) "Council" means the Local Health Personnel Advisory Council appointed by the Secretary of the Cabinet for Human Resources under the provisions of 902 KAR 8:050.

(15) "Demotion" means a change of an employee from a position in one (1) class to a position in another class having a lower entrance salary.

(16) "Department" means the Department for Health Services within the Cabinet for Human Resources.

(17) "Detail to special duty" means the assignment of an employee to a position for not more than twenty-six (26) pay periods to fulfill the responsibilities of an employee on leave or the assumption of additional job duties.

(18) "Disabled veteran" means a veteran who has established by official records of the United States government the present existence of a service connected disability.

(19) "Discrimination" means any administrative decision based in whole or in part on a person's race, sex, age, religion, national origin or disability, except where such decision is supported by a valid occupational qualification.

(20) "Discipline" means any effort to positively instruct or punish an employee concerning inappropriate conduct and behavior or unsatisfactory job performance requiring redirection.

(21) "Eligible" means an individual whose name appears on a register for a particular class.

(22) "Eligible list" means a list of names of persons who have been found qualified through suitable competitive examinations for positions or classes of positions.

(23) "Emergency appointment" means the appointment of a person to a position, for a period not to exceed seven (7) [~~six (6)~~] pay periods, when an emergency makes it impractical or impossible to fill the position through standard appointment procedures.

(24) "Excessive absenteeism" means absences from the employee's work station that cause the irregular attendance with or without approval of the agency. Absences may include **tardiness, leaving early,** [~~being tardy, leaving early,~~] abuse in the use of sick leave, **abuse in the use of** [~~and~~] annual leave, **violating** [~~violation of~~] agency break **policy,** [~~s~~] and **violation of agency lunch policy** [~~lunch provisions~~].

(25) "Flagrant violation" means a breach of state law, agency rules, policies or directives by an employee, which, under the circumstances, constitutes a clear, present or immediately foreseeable threat or danger to the life, safety, health, or welfare of patients, other employees, the subject employee, or general public, or otherwise seriously disrupts the agency's normal course of business.

(26) "Full-time employee" means an employee who is compensated on a salary basis for a standard biweekly pay period.

(27) [~~(25)~~] "Immediate family" means the spouse, parent, child, brother, or sister, or the spouse of either of them, grandparent, grandchildren, mother- or father-in-law, daughter- or son-in-law.

(28) [~~(26)~~] "Job description" means a written description for each classification setting forth the title of the class, the characteristics of the work, the minimum requirements, and the special requirements including any physical standards deemed necessary to satisfactorily do the work.

(29) [~~(27)~~] "Local health department" means an agency as defined above subject to the provisions of administrative regulations 902 KAR 8:050 through 902 KAR 8:140.

(30) [~~(28)~~] "Minimum qualifications" means a comprehensive statement setting forth the minimum background required as to education and experience.

(31) [~~(29)~~] "Minimum salary" means the lowest rate of pay in the salary range for a class of positions.

(32) [~~(30)~~] "Nonstatus employee" means a provisional, emergency, temporary, or seasonal employee or an employee who has not completed the initial probationary period.

(33) [~~(31)~~] "Initial probationary period" means the period an employee is required to serve prior to becoming a permanent employee in an agency.

(34) [~~(32)~~] "Outstanding merit payment" means a lump sum payment made to an employee based on an employee's outstanding job performance.

(35) "Part-time employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked do not average 100 hours of work per month.

(36) [~~(33)~~] "Part-time 100 hour employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked average [~~appointed on a part-time basis to work at least~~] 100 hours per month.

(37) [~~(34)~~] "Performance evaluation" means a method of evaluating each employee on the employee's capability of performing the duties and responsibilities of the job.

(38) [~~(35)~~] "Probationary employee" means an employee serving the required initial probationary period following appointment.

(39) [~~(36)~~] "Promotional probationary period" means a period during which an employee is required to demonstrate fitness for the duties to which the employee has been promoted by actual performance of the duties of the position.

(40) [~~(37)~~] "Reemployment list" means a list of persons who may be appointed to a class of positions without further certification or examination due to their prior career status in the classification or related classification.

(41) [~~(38)~~] "Register" means an officially promulgated list of eligibles for a job classification in the order of their final ratings on a merit examination.

(42) [~~(39)~~] "Salary range" means the rate and range of pay established for a class of positions.

(43) [~~(40)~~] "Seasonal position" means a position established for a specific seasonal purpose and for a specific period of time not to exceed nineteen (19) pay periods.

[~~(41) "Severe infraction" means the violation of agency policy that may result in financial liability or potential litigation or the commitment of an act in the provision of a service that may pose a risk to the individuals being served.~~]

(44) [~~(42)~~] "Status employee" means an employee who has satisfactorily completed the required initial probationary period and is afforded the rights and privileges provided by administrative regulation 902 KAR 8:050 through 902 KAR 8:140.

(45) [~~(43)~~] "Temporary appointment" means an appointment for a period not to exceed thirteen (13) pay periods from a register of eligibles for a period not to exceed a six (6) month period.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 6, 1993
FILED WITH LRC: July 7, 1993 at 10 a.m.

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

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation provides for the classification and compensation plans for local health departments. The classification plan provides position classification descriptions which describe the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications that are necessary or desirable for the satisfactory performance of the duties of the various classes. The compensation plan provides salary schedules for the various classes with the salary of each class consistent with the functions outlined in the job specifications and provides requirements which must be met for salary adjustments for employees.

Section 1. Classification Plan. (1) A comprehensive position classification plan shall be established by the department with the advice of the Local Health Personnel Advisory Council and the local health departments.

(2) The classification plan shall set forth, for each class of positions:

(a) A title; and

(b) A description of the duties and responsibilities; and

(c) The minimum requirements of training and experience; and

(d) Other qualifications that are necessary or desirable for the satisfactory performance of the duties of the class.

(3) The class specifications shall be descriptive and explanatory and used to allocate positions to classes as determined by their duties or responsibilities. The language of class specifications shall not be construed as limiting or modifying the authority which an appointing authority has to change the duties and responsibilities or assign duties to employees which are of similar kind or quality.

(4) Each position in an agency shall be allocated to one (1) of the classes established by the classification plan.

(5) A reallocation or allocation shall be made to new or existing classes as additional classes are established, abolished, or changed.

(6) The department shall allocate newly established positions to classes upon receipt of a statement of duties, responsibilities, and requirements of such positions from the appointing authority.

(7) The department shall:

(a) Maintain the position classification plan by reviewing job descriptions prepared by the appointing authority for appropriate allocation of positions to approved classes; and

(b) Conduct a general review of the classification plan at least annually based on the review of job descriptions and other information.

(8) The department shall change the classification of existing positions through a reclassification if a material and permanent change in the duties or responsibilities of a position occurs.

(a) The employee within a position at the time it is reclassified, shall serve with the same status obtained before the position was reclassified.

(b) A reclassification shall not be permitted during the initial employment probationary period.

(9) An employee who is advanced to a higher pay grade through a reclassification of his position shall have his salary increased to the higher of:

(a) Five (5) percent; or

(b) To the minimum salary assigned to the reclassified position if the employee's salary is below the minimum of the new grade.

(10) The department shall change the allocation of existing positions if it is determined that the position is incorrectly allocated and there has been no substantial change in duties from those in effect when the position was originally classified. If a position is reallocated, the employee within the class of position shall be entitled to serve with the same status obtained before the position was reallocated.

(11) The department shall maintain a master set of all approved class specifications. The department shall provide each appointing authority with a set of the class specifications.

[~~(12) An agency may be required to have approval of the department prior to establishing positions after approval of the agency's budget.~~]

Section 2. Compensation Plan. (1) The department shall establish a compensation plan with the advice of the Local Health Personnel Advisory Council and the local health departments. The plan shall take into consideration the following:

(a) Financial conditions of the agencies; and

(b) Experience in recruiting for positions; and

(c) Prevailing rates of pay for services of similar kind and quality; and

(d) Benefits received by employees; and

(e) Consistency in application among local health departments.

(2) The compensation plan shall include minimum, intermediate, and maximum rates of pay for the various classes within the classification plan. The compensation plan shall also be used to determine salary adjustments provided for under this administrative regulation.

(3) The department shall annually review and amend as necessary the compensation plan with the advice of the Local Health Personnel Advisory Council and local health departments. Amendments shall include changes in minimum, midpoint and maximum salary levels for respective classifications of the classification plan.

(4) The entrance salary of any employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed unless otherwise approved by the department.

(5) A new minimum entrance salary may be established by an agency with the approval of the department if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary. Appointments to the position may be made within the new salary range applicable to the class. If appointments are made at the new established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(6) The department may approve a higher entrance salary for employees entering professional, technical or clerical positions if the individual possesses qualifications in training and experience above the minimum required for the class.

(a) Employees possessing the same qualifications in the same class of positions, in the same agency and who are paid below the salary level of the newly appointed employee, shall have their salary adjusted to the approved entrance salary level.

(b) The salary of an individual meeting these requirements shall not exceed the midpoint salary established for the classification.

(7) If a former employee is reinstated or reemployed in a class for which he was previously employed, the appointing authority may make an appointment at the same pay rate the employee had been paid at the termination of service. An appointing authority may reemploy a former employee at a higher salary rate than previously if justified on the basis of:

(a) Additional qualifications acquired by the employee; or

(b) Established minimum entrance salary is above the former salary; or

(c) Compensation plan changes.

Section 3. Salary Adjustments. (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period. The salary adjustment shall take effect the first pay period following completion of the probationary period. An employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

(2) The agency may, with the approval of the department, annually establish a standard salary adjustment rate, not to exceed five (5) percent, for which all employees shall be eligible and given consideration based on documented satisfactory job performance.

(a) The salary adjustment shall be given at the beginning of the first full pay period following twenty-six (26) full pay periods of continuous service since the established anniversary date.

(b) If an agency does not grant an annual increment no outstanding meritorious lump sum payment shall be approved. (3) A n appointing authority may deny an annual increment to an employee for the following reasons;

(a) Documented unsatisfactory work performance;

(b) Excessive absenteeism;

(c) Excessive tardiness;

(d) Record of disciplinary action; or

(e) Failure to cooperate.

(4) An employee whose annual increment is denied shall be notified by the appointing authority at least two (2) weeks prior to the anniversary date. **The employee action for which the annual increment was denied may lead to disciplinary action if not corrected.**

(5) An employee's anniversary date shall be the first day of the first full pay period upon completion of twenty-six (26) pay periods of continuous service after initial employment.

(6) If an employee receives an increase in salary due to a promotion, the anniversary date shall be changed to be effective the first day of the first full pay period following twenty-six (26) pay periods after the effective date of the promotion.

(7) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(8) 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) Returns from military leave;

(g) Is reclassified.

(9) The appointing authority, with the approval of the department may award any permanent, full-time or part-time employee an outstanding meritorious lump sum payment if:

(a) The employee's acts or ideas resulted in significant financial savings to the local health department, or a significant improvement in service to the citizens; or

(b) The employee's job performance is outstanding.

(10) A lump sum payment shall not exceed eight (8) percent of the employee's current annual salary within a one (1) year consisting of twenty-six (26) full pay periods based on the annual increment date.

(a) The appointing authority may grant two (2) four (4) percent lump sum payments within the same time period but there shall be at least a thirteen (13) pay period interval between requests.

(b) The appointing authority shall submit written justification to the department for the outstanding merit payment to be effective.

(11) If a new or different salary range is made applicable to a class of position(s), persons employed in positions of that class at the effective date of the adjustment shall have their salary placed at least at the minimum salary of the new range.

(a) An adjustment may be made to an employee's salary level within the new range not to exceed the rate of increase provided in the established new salary range.

(b) An appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(12) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to occupy a position and assume the job duties of an employee on an approved leave of absence or assume additional job duties for a temporary time period.

(a) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.

(b) After completion of the special assignment, the employee shall be transferred back to the former classification with the employee's salary reduced to the salary rate received prior to the detail assignment following completion of the special assignment. An employee shall be entitled to all salary increases he would have received had he not been on special assignment.

(13) [~~(10)~~] If an above minimum entrance rate is established by an agency for a specified class based on documented recruitment needs, the department may approve a salary adjustment for employees in the same class. The adjustment shall not exceed the rate of increase to the newly established minimum. In fixing salaries on an adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(14) [~~(11)~~] The department may approve other salary adjustments with the advice of the Local Health Personnel Advisory Council. Salary adjustments may address special working conditions, after hours adjustment where working hours cannot be adjusted or other specific circumstances.

(15) [~~(12)~~] An appointing authority may request a four (4) percent in range salary adjustment if an employee is assigned permanent job duties and responsibilities which are more difficult than current job duties, but are less than those indicated through a reclassification.

(16) An in-range adjustment shall be calculated by multiplying the percentage amount of the in-range adjustment times the difference between the minimum and maximum of the respective grade of the employee's classification and adding to the employee's salary.

RICE C. LEACH, M.D. Commissioner

FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: July 6, 1993

FILED WITH LRC: July 7, 1993 at 10 a.m.

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

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation and the resignation of employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation describes the various categories of employment and types of appointments permitted under the merit system, the standards under which the appointments are made and requires a probation period following appointment or promotion. This administrative regulation describes an evaluation process to measure employee performance of job duties and responsibilities. Requirements for employee resignations and the process of lay off is also addressed.

Section 1. Initial Appointments. The appointing authority of a local health department shall make an initial appointment of an eligible only from a certification of eligibles issued by the department. The appointing authority or other designated supervisory staff, shall interview and examine applicants certified and shall report the final selection to the department.

Section 2. Provisional Appointments. (1) If there are urgent reasons for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending examination and establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) No provisional appointment shall be made until the position has been classified and minimum qualifications established for the class of position. The provisional appointment shall not exceed thirteen (13) pay periods from the date of appointment or within two (2) weeks of the date on which the department notifies the appointing authority that an appropriate register has been established, whichever occurs first.

(3) Successive provisional appointments of the same person shall not be permitted. A position shall not be filled by repeated provisional appointments.

(4) Provisional service immediately prior to original appointment may be credited, at the request of the appointing authority, toward the required probationary period.

Section 3. Reinstatement. (1) For a period of time not to exceed three (3) years since termination of employment from an agency, a permanent employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position without examination, with the same seniority rights and leave status. The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

(2) The individual being considered for reinstatement shall not be required to serve a probationary period. The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement. Accumulated sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency may be used to determine the rate at which the employee earns annual leave.

Section 4. Emergency Appointments. (1) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for provisional appointment, the appointing authority may appoint, with the approval of the department, a person or persons at the minimum entrance salary for the class. An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable. The department may make such investigations as necessary to determine whether an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, or reinstatement to a position under the merit system.

Section 5. Temporary Appointments. (1) If a vacancy occurs in a position having duties of a strictly temporary nature, a certification may be issued by the department of those eligibles, who have indicated a willingness to accept temporary employment in the order of their places on an appropriate register.

(2) The duration of a temporary appointment shall not exceed thirteen (13) pay periods.

(3) The acceptance or refusal of a temporary appointment shall not affect an eligible's standing on a register or eligibility for a probationary appointment.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

(5) Successive temporary appointments of an employee to the same position shall not be made.

Section 6. Seasonal Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a seasonal basis for up to nineteen (19) pay periods to accommodate the following:

(a) Increased work activity of a seasonal nature; or

(b) Work study or job training programs; or

(c) Special projects; and

(d) Summer employment.

(2) Only an applicant meeting the established minimum requirements for the position may be appointed to a seasonal position.

(3) Successive appointments to the same seasonal position shall not be made.

Section 7. Performance Appraisal. (1) The appointing authority, or designated supervisory staff, shall conduct a performance appraisal for each permanent employee on an annual basis, and for each probationary employee prior to completion of the required probationary period.

(2) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.

(3) Performance appraisals shall be considered in determining annual and probationary salary advancements and in requesting and approving promotions, demotions, dismissals, and in determining the order of separations due to reduction of work force.

(4) Performance appraisals shall be prepared and recorded on the Employee Performance Appraisal form numbered CH-40, dated April 1993. The Employee Performance Appraisal form CH-40 is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

Section 8. Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall be thirteen (13) pay periods except as provided in subsection (3) of this section.

(3) [~~The initial probationary period may be extended for the following reasons:~~

~~(a) If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence; or~~

~~(b) The department, with the advice of the Local Health Personnel Advisory Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications.~~

~~(4) At least thirty (30) days prior to the completion of a probationary period, the employee's job performance shall be evaluated to determine if the employee's job performance is satisfactory.~~] The appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period as to one (1) of the following actions:

(a) The employee has satisfactorily completed the initial probationary period based on a performance evaluation, and permanent status has been confirmed; or

(b) The employee has not successfully performed the duties and completed the probationary period as evidenced by the required performance evaluation, and shall be dismissed without the right of appeal and hearing;

(c) If the initial probationary period will be extended because of absences during the probationary period due to medical reasons which cause the employee to be absent from work for twenty (20) days or more during the probationary period.

(4) The department, with the advice of the Local Health Personnel Advisory Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications, **for example, the health environmentalist classification**.

(5) If the employee is to be dismissed during the initial probationary period, the employee shall be notified at least fourteen (14) days prior to the effective date of dismissal and prior to the expiration of the probation period. The employee may be placed on a register of eligibles by the department if the action is appropriate. The employee shall not be certified to the agency from which separated unless the agency requests otherwise.

(6) The employee, serving a probationary period may be eligible for promotion to a position in a higher class, provided the employee is certified from an appropriate register. If an employee is promoted during a probationary period, the probationary period shall begin with the date of the most recent appointment.

Section 9. Probation Period Following Promotion. (1) A promotional probationary period of thirteen (13) full pay periods shall be required of an employee upon promotion.

(2) If an employee is granted leave in excess of twenty (20) consecutive work days during the promotional probationary period, his initial probation shall be extended for the same length of time as the granted leave to cover the absence.

(3) A performance evaluation shall be completed for the employee prior to completing the probationary period, to determine the employee's ability to perform successfully the job duties.

(4) If approved by the appointing authority, a promoted employee may request to be reverted to a position in the former class during the probationary period.

(5) An employee who has been promoted but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority, shall revert to a position of his former class. If there is no vacancy in the former class the employee may by reverted to a position in a different class if qualified and certified by the department.

(6) Documentation of the reasons for unsuccessful completion shall be provided to the employee and the department.

(7) If a permanent employee is dismissed for cause while serving a promotional probationary period the employee has the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 10. Resignations. (1) An employee who desires to terminate his service with an agency shall submit a written resignation to the appointing authority.

(2) Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.

(3) Failure of an employee to give fourteen (14) calendar day notice shall, unless otherwise approved by the appointing authority, result in the employee forfeiting payment for accrued annual leave.

Section 11. Layoffs. (1) An appointing authority may lay off an employee in the classified service if necessary because of shortage of funds, abolishment of a position, or other material change in the duties or the organization of the agency.

(2) The agency shall submit a plan to the department for approval prior to layoff. The plan shall identify the factors considered and identify the employee(s) proposed to be laid off. The agency shall consider at least the following factors.

(a) Seniority of employees; and

(b) Results of employee performance evaluation(s); and

(c) Qualification of employees; and

(d) Type of appointment or source of funding.

(3) The employee shall be notified of the effective date and given written notice of the reasons for the layoff and the right to be placed on a reemployment register.

(4) No permanent employee shall be separated by layoff if there are provisional, temporary, emergency, seasonal or probationary employees serving in the agency in the same class.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 6, 1993
FILED WITH LRC: July 7, 1993 at 10 a.m.

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

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees.

Section 1. Promotion. (1) An employee may be promoted at any time upon the request of an appointing authority if he meets the minimum requirements of the position having a higher salary and is certified by the department.

(2) The employee shall serve a probationary period to determine through performance evaluation**[**~~,~~**]** if the employee can satisfactorily perform the duties and responsibilities of the position.

(3) An employee who is promoted shall have his salary raised to the greater of the following:

(a) The amount required to raise the salary of the employee to the minimum established for the class; or

(b) Three (3) [~~Four (4)~~] percent of the employee's current salary if the promotion is to a class having a one (1) grade higher salary range; or

(c) Six (6) [~~Eight (8)~~] percent of the employee's current salary if the promotion is to a class having a salary range which is two (2) or more grades higher.

(4) An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) [~~four (4)~~] percent increase in salary.

(5) A permanent employee promoted from a classified position to an unclassified position retains his status in the classified service. **[**~~(a)~~**]** If separated from an unclassified position following promotion, an employee shall revert to the class in which he previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department. **[**~~(b)~~**]** Time served in an unclassified position shall count towards years of service and seniority.

Section 2. Transfers. (1) A transfer of a permanent employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an

agency, may be made at any time by the appointing authority.

(2) A transfer of a permanent employee from a position in one class to a position in another class, within an agency, having the same entrance salary may be made only with the approval of the appointing authority and upon certification of the department. The department may require a qualifying examination.

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority.

(a) Accumulated annual and sick leave shall be transferred.

(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency.

(c) The annual increment date shall be retained by the employee.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

(a) Documented unsatisfactory employee performance during the promotional probationary period; or

(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties [~~and reduction in salary because of inability to perform job duties, inefficiency, or other reasons approved by the appointing authority~~]; or

(c) Documented disciplinary problems or the inability of an employee to perform the duties and responsibilities required of the position; or

(d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) The salary of an employee who voluntarily requests demotion shall be reduced by five (5) percent if the demotion is to a classification having a one (1) grade or two (2) lower salary [~~or ten (10) percent if the demotion is to a classification resulting in a decrease of two (2) or more grades in salary~~].

(3) The salary of an employee who voluntarily requests a demotion shall be reduced by three (3) percent for each grade decrease if the demotion is to a classification resulting in a decrease of three (3) or more grades.

(4) [~~(3)~~] Except as provided in subsection (6) [~~(5)~~] of this section, the salary of an employee who is demoted because of documented disciplinary problems or inability to perform the duties and responsibilities required of the position, shall be reduced to a salary level determined by adding the total percentage difference, as described by the compensation plan, between the employees current grade level and the grade of the classification to which the employee is demoted.

(5) [~~(4)~~] If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(6) [~~(5)~~] If an employee is demoted during the initial probationary period, the employee shall continue in his probationary period as if the original appointment had been to the position of the lower class.

(7) [~~(6)~~] An employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall have his salary reduced to the level prior to promotion.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 6, 1993
FILED WITH LRC: July 7, 1993 at 10 a.m.

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

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. The administrative regulation governs separations and disciplinary procedures applicable for local health departments. Included are requirements for progressive disciplinary steps, predisciplinary action procedures, and an appeal process.

Section 1. Disciplinary Action. (1) An appointing authority may discipline an employee for lack of good behavior or the unsatisfactory performance of job duties.

(2) A classified employee with status shall not be disciplined except for cause.

(3) **Situations that may warrant disciplinary action include, but are not limited to the following:** [~~The following are situations that may warrant disciplinary action:~~]

(a) Inefficiency or incompetency in the performance of duties;

(b) Negligence in the performance of duties;

(c) Careless, negligent, or improper use of local health department property or equipment;

(d) Failure to maintain satisfactory and harmonious working relationships with the public and coworkers;

(e) Habitual improper use of sick leave and other leave privileges;

(f) Habitual pattern of failure to report for duty at the assigned time and place;

(g) Failure to obtain or maintain a current license or certificate or other qualifications required by law or rule as a condition of continued employment;

(h) Gross misconduct or conduct unbecoming an employee;

(i) Willful abuse or misappropriation of funds, property or equipment;

(j) Conviction of a felony;

(k) Falsification of an official document relating to or affecting employment;

(l) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, or that would interfere with the ability of management to manage;

(m) Damage or destruction of agency property;

(n) Abuse towards patients, coworkers, or the public in the performance of duties;

(o) Refusal to carry out a reasonable and proper assignment from an authorized supervisor (insubordination);

(p) Reporting to work under the influence of alcohol or illegal drugs, or partaking on the job;

(q) Sleeping or failure to remain alert during working hours;

(r) Violation of confidential information policies of the agency;

(s) Prohibited political activity;

(t) Unauthorized absence or absence for any period of working without notifying supervisor.

Section 2. Predisciplinary Action Hearing. (1) Except as provided in subsection (7) of this section, prior to demotion, suspension, or dismissal, a classified employee with status shall be notified in writing of the intent of the agency to demote, suspend, or dismiss the employee. The notice shall also state the following:

(a) The specific reasons for the demotion, suspension, or dismissal including:

1. The statutory, regulatory, or agency policy violation; or [~~and~~]

2. The specific action or activity on which the intent to demote, suspend, or dismiss is based; and

3. The date, time, and place of the action or activity; and

4. The name of the parties involved.

(b) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) No later than five (5) working days after receipt of the notice of intent to demote, suspend, or dismiss, excluding the day the employee receives the notice, the employee may request to appear to reply to the appointing authority.

(3) The meeting shall be held six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5) If the appointing authority determines that the employee shall be demoted, suspended, or dismissed, the employee shall be notified in writing fourteen (14) days prior to the action of:

(a) The effective date of the demotion, suspension, or dismissal; and

(b) The statutory, regulatory, or agency policy violation; or [and]

(c) The specific action or activity on which the demotion, suspension, or dismissal is based; and

(d) The date, time, and place of such action or activity; and

(e) The name of the parties involved; and

(f) That the employee may appeal the demotion, suspension, or dismissal to the Local Health Personnel Advisory Council no later than fifteen (15) days after the effective date of the demotion, suspension, or dismissal.

[~~(g) Provide the employee with the appeal request form.~~]

(6) If the appointing authority determines that the employee shall be demoted, suspended, or dismissed, the employee shall be provided with the Appeal Request Form at the same time of the notification contained in subsection (5) of this section.

(7) [~~(6)~~] All appeals shall be submitted on the appeal request form, dated April 1, 1993. The appeal request form is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

(8) [~~(7)~~] Upon determining that an employee has committed a flagrant violation and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken. A pretermination hearing shall be provided as soon as practicable after removal. The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 6, 1993
FILED WITH LRC: July 7, 1993 at 10 a.m.

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

908 KAR 2:070. Standards for rape crisis centers.

RELATES TO: KRS [~~Chapter 47,~~] 210.410, 210.450, **Acts 1992, c. 462, House Bill 468, Part I, G. Human Resources, 52. Cabinet for Human Resources, e. Department for Mental Health and Mental Retardation Services, p. 1984, Commonwealth Budget Final Budget Memorandum, FB 92-94, pages 290, 291, 2e**

STATUTORY AUTHORITY: KRS [~~194.050(1), 210.440~~] 210.450, **House Bill 468, Part I, G. Human Resources, 52. Cabinet for Human Resources, e. Department for Mental Health and Mental Retardation Services, Commonwealth Budget Final Budget Memorandum, FB 92-94, pages 290, 291, 2e**

NECESSITY AND FUNCTION: **The Budget Bill and Final Budget Memorandum for Fiscal Biennium 1992-1993 establish the rape crisis centers and appropriate funds for rape victim services program development through the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services. KRS 210.410 and 210.450 require the cabinet to allocate funds to mental health/mental retardation boards, pursuant to approved annual plans and budgets, and by the promulgation of administrative regulations that establish eligibility criteria.** [~~KRS Chapter 47, Appendix A, Part G.52.e, as enacted by the 1992 General Assembly, appropriated to the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services, funds for the purpose of rape victim services program development. The Cabinet for Human Resources is empowered and directed by KRS 210.370 to 210.460 to allocate available funds to mental health/mental retardation boards in accordance with approved annual plans and budgets. KRS 210.440 and 210.450 authorize the Secretary of the Cabinet for Human Resources to promulgate policies and administrative regulations as to the operations of community mental health programs. The purpose of this regulation is to provide reasonable standards for rape crisis centers and minimum eligibility requirements for the receipt of state funds.~~]

Section 1. Definitions. (1) "Advisory committee" means any designated group to whom the governing board may delegate responsibility for recommendation of policy and procedures related to the operation of the rape crisis center. Final approval and accountability shall remain the ultimate responsibility of the governing board.

(2) "Annual plan and budget" means the annual application for funding submitted by each rape crisis center.

(3) "Cabinet" means the Cabinet for Human Resources.

(4) "Department" means the Department for Mental Health and Mental Retardation Services.

(5) "Governing board" or "board" means the board of directors vested with the legal responsibility for management of affairs of the rape crisis center.

(6) "Primary service provider" means **the** [~~that~~] agency within each region designated by the cabinet as the primary agency to provide rape crisis services.

(7) "Rape crisis center", or "center", means a program which provides crisis intervention and support services to victims of sexual assault and their family members.

(8) "Region" means the geographic locality determined by the incorporation of the local mental health/mental retardation board [~~as~~] authorized under KRS 210.370 **and 210.380** [~~to 210.460~~] and 908 KAR 2:030, Section 2.

Section 2. Governing Board of Directors. (1) Each center shall be managed by a governing board so as to allow community involvement in the planning, development and evaluation of its services.

(2) Each governing board shall adopt written bylaws. The bylaws shall include **the** [~~, but not be limited to~~]:

(a) [~~The~~] Purpose of the agency;

(b) Minimum and maximum number of member positions;

(c) Qualifications for board **members** [~~membership~~];

(d) Types of **members** [~~membership~~];

(e) Method of selecting members;

(f) Terms of **members** [~~membership~~];

(g) Method of filling vacancies;

(h) Officers and duties;

(i) Method of election of officers and chairpersons; [~~and~~]

(j) An annual meeting date for the election of officers; and

(k) [~~(j)~~] Methods for removal of directors who are excessively absent from board meetings.

(3) The **duties** [~~conduct~~] of the board shall **be to** [~~include, but not be limited to~~]:

(a) Establish[~~ing~~] quorum requirements for meetings of the board.

(b) Schedule [~~ing~~] meetings of the board to be held a minimum of eight (8) times per fiscal year. [~~An annual meeting date for the election of officers shall be specified in the bylaws of the board.~~]

(c) Maintain[~~ing~~] minutes of each meeting of the board which shall contain the date and place of the meeting, names of members present, the subject matter discussed and actions taken, and the name of the reporter. Minutes of each board meeting shall be forwarded to each board member and to the department within thirty (30) days of the meeting.

(d) Create [~~ing~~] standing committees of the board to include executive, nominating, finance, personnel, staff development and training, and program planning and evaluation committees. At the discretion of the board, the functions of one (1) or more of these committees may be assumed by one (l) committee.

(e) Establish[~~ing~~] restrictions on reimbursement of members of the board including the prohibition against any member contracting with the board to perform personal or professional services.

(4)**(a)** If the rape crisis center is a program of **another** [~~a larger~~] entity, the governing board **of that entity** shall appoint an advisory committee.

(b) A minimum of one (1) member of the board shall be appointed to serve on the advisory committee of the rape crisis center.

(c) The advisory committee **shall** [~~must~~] adhere to the requirements of the board as outlined in this section.

Section 3. Personnel Management. (1) A personnel file shall be [~~initiated and~~] maintained by the center for each employee.

(2) The minimum contents of the personnel file shall include[~~, but not be limited to~~]:

(a) An application for employment;

(b) Professional credentials to reflect training and experience adequate for qualification for the position to which the employee is hired;

(c) A document containing conditions or terms of employment;

(d) A personnel action form reflecting any change in status of employee**, such as** [~~(~~]salary change, promotion, resignation or termination[~~)~~]; and

(e) A position description including title of the position, description of duties, and requirements of training and experience necessary to qualify for the position.

(3) [~~(2)~~] Personnel policies shall be **established** [~~initiated and maintained~~] by the center [~~for the governance of all staff~~].

(4) The minimum contents of personnel policies shall include[~~, but not be limited to~~]:

(a) Attendance and leave policies;

(b) Compensation plan;

(c) Fringe benefits;

(d) Hiring and firing practices;

(e) Staff development and continuing education provisions;

(f) Employee grievance procedures;

(g) Employee performance evaluations; and

(h) Equal opportunity employment statements.

(5) [~~(3)~~] The governing board shall employ one (1) staff person as executive/program director of the rape crisis center. The executive/program director shall**:**

(a) Be responsible [~~have the overall responsibility~~] for financial management of the center, including budgets and grant writing;

(b) [~~shall~~] Supervise the duties and activities of all staff and volunteers;

(c) [~~shall~~] Coordinate the design and delivery of sexual assault intervention services;

(d) [~~shall~~] Fulfill all duties as required by the governing board; and

(e) [~~shall~~] Report directly or through supervision to the board on all center activities**; and**

(f) Be a clinical or administrative director, as determined by the board.

(6) [~~. At the discretion of the board, the executive/program director may be a clinical director or an administrative director as defined herein:~~]

(a) **A clinical director shall have the duties and responsibilities established in subsection (5) of this section.**

(b) A clinical director shall provide direct client services.

(c) The requirements for clinical director shall include a:

1. Masters degree in counseling or clinical psychology, social work, nursing, or a related field with a counseling or clinical focus; or

2. Bachelors degree in one (1) of the fields specified in this paragraph, with five (5) years of counseling or clinical experience. [~~A clinical director shall assume all duties and responsibilities as outlined in this subsection. The clinical director shall also provide direct client services. The requirements for the clinical director include a masters degree in counseling or clinical psychology, social work, nursing, or a related field with a counseling or clinical focus; or a bachelors degree in one (1) of these fields with five (5) years of counseling or clinical experience.~~]

(7)(a) An administrative director shall have the duties and responsibilities established in subsection (5) of this section.

(b) An administrative director shall not provide clinical supervision to center staff who provide direct client services.

(c) An administrative director may provide direct service client services if she meets the requirements for a crisis intervention counselor established in subsection (9) of this section.

(d) An administrative director may provide direct client services if center staff who provide direct client services are unavailable.

(e) The requirements for an administrative director shall include a:

1. Masters degree in administration or human services; or

2. Bachelors degree and three (3) years administrative experience.

(8) A center that employs an administrative director shall also employ a client services coordinator who shall:

(a) Provide direct client services;

(b) Provide clinical supervision to center staff who provide direct client services;

(c) Provide program management consultation; and

(d) Meet the educational and experience requirements for a clinical director established in subsection (6) of this section.

[~~(b) An administrative director shall assume all duties and responsibilities as outlined in this subsection. The administrative director shall not provide clinical supervision to center staff who provide direct client services, and shall provide direct client services only when other staff are unavailable. The administrative director shall not provide any direct services unless he also meets the requirements of the crisis intervention counselor as outlined in subsection (4)(b) of this section. Centers which employ administrative directors shall also~~

~~employ a staff member to supervise and provide the direct services provided by the center who meets the educational and experiential requirements of the clinical director as provided in paragraph (a) of this subsection. The requirements for the administrative director include a masters degree in administration or human services or a bachelors degree and three (3) years of administrative experience.]~~

(9) A board may establish the staff positions specified in this subsection, if it determines they are required to provide the services established in Section 4 of this administrative regulation.

(a) Crisis intervention counselor. A crisis intervention counselor shall:

1. Provide short-term counseling and advocacy related to the immediate crisis that results from sexual abuse or assault;

2. Receive clinical supervision by the client services coordinator; and

3. Have a bachelors degree in counselling, clinical psychology, social work, a related field, or two (2) years of counseling experience.

(b) Volunteer coordinator. A volunteer coordinator shall provide direct supervision to a person who volunteers to provide services for a center.

(c) Therapist. A therapist shall:

1. Provide psychotherapy that may address recent or past sexual assault; and

2. Have a masters degree in counseling, clinical psychology, social work, a related field with counseling or clinical focus, and three (3) years counseling or clinical experience.

(d) The qualifications established in paragraphs (a) through (c) of this subsection shall not apply to center staff hired prior to the effective date of this administrative regulation.

(e) Within three (3) months of employment, a crisis intervention counselor, a volunteer coordinator, and a therapist shall have received forty (40) hours of training on issues related to sexual assault.

(f) A staff member shall receive at least ten (10) hours of the training required by paragraph (e) of this subsection before providing services to clients.

(g) Prior to serving as a volunteer, a person shall have received forty (40) hours of training related to sexual abuse and assault.

~~[(4) At the discretion of the board, other staff positions shall be appointed as necessary to provide the services as provided in Section 4 of this administrative regulation. These may include, but not be limited to:~~

~~(a) A client services coordinator shall be required when the executive/program director is an administrative director as defined in subsection (3)(b) of this section. This position shall provide direct client services, shall provide clinical supervision to center staff who provide direct client services and shall provide program management consultation. The requirements for the client services coordinator include a masters degree in counseling or clinical psychology, social work, or a related field; or a bachelors degree in counseling or clinical psychology, social work, or a related field and five (5) years of counseling or clinical experience.~~

~~(b) A crisis intervention counselor shall provide short term counseling and advocacy related to the immediate crisis which results from sexual abuse or assault. Crisis intervention counselors shall receive ongoing clinical supervision and shall have, at minimum, a bachelors degree in counseling or clinical psychology, social work or a related field, or at least two (2) years of counseling experience.~~

~~(c) A volunteer coordinator shall provide direct supervision to all persons who donate free service time toward the provision of services for the center.~~

~~(d) A therapist shall provide ongoing psychotherapy which may address recent or past sexual assault. The requirements for a therapist include a masters degree in counseling or clinical psychology, social work, or a related field with a counseling or clinical focus and three (3) years of counseling or clinical experience.~~

~~(e) Any staff member who provides the services described in the above position descriptions shall meet the qualifications of that specific position, with the exception that staff hired prior to the implementation of this regulation shall be grandfathered in.~~

~~(f) All staff members described in the above position descriptions shall receive forty (40) hours of training on issues related to sexual assault within three (3) months of employment. Staff members who provide client service shall receive a minimum of ten (10) hours of that training prior to providing services to clients.]~~

Section 4. Services. (1) A rape crisis center shall:

(a) Provide the services specified in subsections (2) through (5) of this section; or

(b) Refer clients to a provider of these services.

(2) Crisis intervention services. Crisis intervention services shall:

(a) Be immediately available to victims of sexual abuse and assault twenty-four (24) hours a day; and

(b) Include the following:

1. A crisis telephone line;

2. Crisis counseling services; and

3. Accompaniment to medical or legal services related to the abuse or assault.

(3) Support services.

(a) Support services shall be available to assist victims of sexual abuse and assault to recover.

(b) Support services shall include:

1. Legal and medical advocacy;

2. Information and referral;

3. Case management;

4. Family support; and

5. Support group services.

(4) Consultation and education services.

(a) Consultation and education services shall be available to:

1. Increase community awareness of sexual abuse and assault; and

2. Improve the ability of professionals to provide services to persons who have been sexually abused and assaulted.

(b) Consultation and education services may include:

1. School-based prevention programs;

2. Community education programs;

3. Media presentations;

4. In-service training; and

5. Case consultation services.

(5) Clinical services. Clinical services related to the mental health needs of victims of sexual abuse and assault shall:

(a) Be provided by professionals who meet the requirements of the therapist position established in Section 3(9)(c) of this administrative regulation; and

(b) Include individual, couple, family, and group therapy services.

(6) Volunteer network. A rape crisis center shall maintain an active volunteer network to assist with the provision of:

(a) Direct services to victims of sexual abuse and assault; and

(b) Indirect services for the center.

(7) Client files.

(a) A rape crisis center shall open a client file for each victim of sexual abuse and assault who is provided a service, excluding service that is limited to a telephone conversation.

(b) A client file shall include:

1. A current service plan that details the services needed by the victim; and

2. A statement of the goals for intervention.

(c) A client file shall be confidential, except as otherwise

provided by applicable law.

(8) Client grievances. A rape crisis center shall establish a written grievance procedure that shall:

(a) Be given to each client that comes to the center for services; and

(b) Contain a description of the:

1. Services provided by the center; and

2. Procedure for filing a client grievance. [~~Service Delivery. (1) The rape crisis center shall maintain and provide four (4) essential services, or provide referral to these services through a formalized referral mechanism:~~

~~(a) Crisis intervention services shall be immediately available to victims of sexual abuse and assault on a twenty-four (24) hour basis; and shall include a crisis telephone line, crisis counseling services, and accompaniment to medical or legal services related to the abuse or assault.~~

~~(b) Support services shall be available to assist victims of sexual abuse and assault to recover from the effects of the victimization experience, and shall include legal and medical advocacy, information and referral, case management, family support and support group services.~~

~~(c) Consultation and education services shall be available to increase the awareness of community residents related to the issue of sexual abuse and assault and to improve the ability of other professionals to provide services to this population of clients; and may include school based prevention programs, community education programs, media presentations, in service training, and case consultation services.~~

~~(d) Clinical services to address the mental health needs of victims shall be provided by professionals who meet the requirements of the therapist position as described in Section 3(4)(d) of this administrative regulation, and shall include individual, couple, family and group therapy services.~~

~~(2) The rape crisis center shall maintain an active volunteer network to assist with the provision of direct services to victims and other indirect services for the center. Any volunteers involved in the provision of direct services to victims shall receive forty (40) hours of training on issues related to sexual abuse and assault prior to serving as a volunteer, and shall receive ongoing supervision from center staff.~~

~~(3) The rape crisis center shall open a client file on all victims who receive face to face services from the center. Client files shall include an up to date service plan which details services needed by the victim, and the goals for the intervention process.~~

~~(4) The rape crisis center shall establish written grievance procedures to be given to each client upon initial face to face contact which describe the services provided by the center and the method for filing a client grievance.~~

~~(5) Client files shall be maintained as confidential, and shall not be shared with any individual or agency outside the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services; the Division of Licensing and Regulation; federal funding sources as applicable; the regional mental health/mental retardation board if the rape crisis center is a contract agency of the board; or as otherwise authorized by law without the consent of the client.~~

~~(6) The department, and the regional mental health/mental retardation board if the rape crisis center is a contract agency of the board, shall have reasonable access to rape crisis center property and to the records of all services provided, including but not limited to agency financial and client case records for the purpose of auditing, monitoring and programmatic reviews related to the quality of care.~~]

Section 5. Funding. (1) The Primary Service Provider shall be the regional mental health/mental retardation board, unless the provision of services for victims of sexual abuse and assault has been contracted by the board to a nonprofit agency that has been approved by the cabinet.

(2) The agency designated as the primary service provider shall remain the primary service provider, unless its designation has been rescinded by the department after a review by the department of the agency's:

(a) Performance; or

(b) Annual plan and budget proposal for funding for the next fiscal year.

(3) A primary service provider shall submit an annual plan and budget proposal on "Funding Application for Rape Crisis Centers and Rape Victim Services Programs" form.

(4)(a) "Funding Application for Rape Crisis Centers and Rape Victim Services Programs (July 1993)" form is incorporated by reference.

(b) It may be obtained, inspected, or copied at the Division of Mental Health, Department for Mental Health and Mental Retardation Services, Cabinet for Human Resources, Leestown Square, 4th Floor, Fairoaks Lane, Frankfort, KY 40601, 8 a.m. through 4:30 p.m., Monday to Friday.

Section 6. Audit and Monitoring. (1) The department, and a regional mental health/mental retardation board that has contracted with a rape crisis center, shall audit, monitor and conduct program reviews related to the quality of care provided by a rape crisis center.

(2) In order to perform the duties imposed by subsection (1) of this section, a rape crisis center shall grant reasonable access to its property and records. [~~The cabinet shall designate one (1) primary service provider for each mental health/mental retardation board region to receive available state general funds and federal funds to provide rape victim services. The primary service provider shall be the regional mental health/mental retardation board unless that function is contracted by the board to a second private, not for profit agency which is approved by the cabinet. The designation of primary service provider shall be in effect unless rescinded following a review by the department of the rape crisis center's performance or its annual plan and budget proposal for subsequent fiscal year funding. The rape crisis centers which will be initially designated as primary service provider by the cabinet shall be those agencies currently under contract as of the effective date of this administrative regulation.~~

~~(2) Method of allocation. Each center shall submit an annual plan and budget proposal in the form and format prescribed by the cabinet. The application for funding shall demonstrate the capacity to provide crisis intervention services, support services, consultation and education services, and clinical services as defined in Section 4 of this administrative regulation; and shall demonstrate compliance with this administrative regulation.~~]

DENNIS D. BOYD, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 6, 1993
FILED WITH LRC: July 6, 1993 at 3 p.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

GENERAL GOVERNMENT CABINET
Auditor of Public Accounts
(Amended After Hearing)

45 KAR 1:070. Technical audit bulletins.

RELATES TO: KRS 61.190, 64.840, 64.850, 66.480, 68.300, 132.601(1), Ky Const. S 173; Funk vs. Milliken, 317 S.W. 2d 499 (KY 1958)

STATUTORY AUTHORITY: KRS 43.075

NECESSITY AND FUNCTION: KRS 43:075 states that the Auditor of Public Accounts shall promulgate uniform standards and procedures by administrative regulation for conducting audits of county officials. This regulation establishes uniform standards and procedures regarding certain practices which shall be subject to report as audit comments in audits of county officials.

Section 1. Technical Audit Bulletins. "The Office of the Auditor of Public Accounts' Technical Audit Bulletins", dated August 13 [~~October 1~~], 1993, are incorporated by reference. They may be inspected, obtained or copied at the Office of the Auditor of Public Accounts, 144 Capitol Annex, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

A.B. CHANDLER III, State Auditor

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at noon

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

401 KAR 58:020. Controlling asbestos emissions.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-320, 224.99-010, 40 CFR 61.140 through 61.155, Subpart M, as amended by Federal Register 55 FR 48406, November 20, 1990, 763, Subpart E

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 administrative regulation replaces 401 KAR 57:011 and 401 KAR 63:042, which provide for the control of asbestos emissions. 401 KAR 57:011 and 401 KAR 63:042 are repealed in Section 15 of this administrative regulation.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given them in 401 KAR 58:001.

(1) "ACM" means asbestos-containing material that contains more than one (1) percent asbestos by area as determined using the PLM method defined in subsection (55) of this section.

(2) "Adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulate ACM. If visible dust emissions can be seen coming from a disturbance of ACM, the material has not been adequately wet. **However, the absence of visible emissions is not sufficient evidence of being adequately wet.**

(3) "Airlock" means an enclosure system within the containment area designed to prevent the release of asbestos emissions from one area to another. It consists of two (2) doorways separated by at least three (3) feet and made of solid construction or two (2) overlapping layers of polyethylene sheeting.

(4) "Amphibole" means a nonchrysotile asbestiform variety that cannot be adequately wet with water alone.

(5) "Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

(6) "Asbestos abatement project" means a renovation or demolition at a facility which may cause a disturbance of friable ACM above the de minimis amount.

(7) "Asbestos mill" means a facility engaged in converting, or engaged in an intermediate step in converting, asbestos ore into commercial asbestos. Outside storage of ACM is not considered a part of the asbestos mill.

(8) "Asbestos tailings" means a solid waste that contains more than one (1) percent asbestos as determined using the PLM method, which is defined in subsection (55) of this section, and which is a product of asbestos mining or milling operations.

(9) "Asbestos waste from control devices" means a waste material that contains more than one (1) percent asbestos as determined using the TEM method defined in subsection (68) of this section, and which is collected by an air pollution control device.

(10) "Barrier" means a permanent wall or ceiling or, if one does not exist, a temporary partition constructed of polyethylene sheeting to contain asbestos emissions during an asbestos abatement project.

(11) "Certificate" means a permit issued by the cabinet pursuant to KRS 224.10-100 which authorizes a contractor to engage in asbestos abatement projects involving NESHAP work.

(12) "Certified contractor" means an individual or entity who is certified by the cabinet to perform asbestos abatement projects involving NESHAP work.

(13) "Clean room" means an uncontaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of workers' street clothes, clean protective equipment, and clean abatement equipment.

(14) "Clearance air monitoring" means the monitoring of air conducted inside the work area after cleanup of an asbestos abatement project has been completed.

(15) "Commercial asbestos" means a material containing asbestos that is extracted from ore and has value because of its asbestos content.

(16) "Containment area" means the enclosed, sealed area in which an asbestos abatement project is conducted. This includes but is not limited to the work area, equipment room, shower room, clean room, and all associated airlocks and waste loadouts, if these enclosures are required.

(17) "Contractor" means an individual or entity who performs the task of removing or abating asbestos at a facility during a renovation or demolition **[**~~operation~~**]**, including but not limited to setting up and taking down the containment, removal of friable or nonfriable ACM, application of lockdown agents, and preparing the waste for disposal. If these tasks are performed by employees of the facility owner or operator, the owner or operator is the contractor.

(18) "Critical barrier" means a sealed covering made of polyethylene sheeting used to cover windows, doorways, vents, grills or other openings to prevent the escape of asbestos fibers from the work area during an asbestos abatement project.

(19) "De minimis amount" means three (3) linear feet, or three (3) square feet, or one-half (1/2) cubic foot of ACM. Larger components, such as a ceiling tile or fire door, may be included with prior approval of the cabinet.

(20) "Demolition" means the wrecking or taking out of a load-supporting structural member of a facility, or the intentional burning of a facility. If the facility contains ACM, this term includes the removal of ACM, or components containing ACM, and all related handling operations.

(21) "Emergency renovation" means a renovation which is not planned but results from a sudden, unexpected event and which, if not immediately attended to, would likely present a safety or public health hazard, expose equipment to serious damage, or impose an unreasonable financial burden. This term does not include renovations caused by routine failures of equipment.

(22) "Encapsulant" means a material which is used to treat ACM or surfaces stripped of ACM in a manner which surrounds or embeds asbestos fibers in an adhesive matrix to prevent their release.

(23) "Equipment room" means a contaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of contaminated clothing and equipment.

(24) "Fabricating" means processing of a manufactured product that contains commercial asbestos. For friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, and similar operations.

(25) "Facility" means a building, structure, installation, or network (such as pipelines or water lines), a ship, or an active or inactive waste disposal site, except as follows:

(a) A residential building having four (4) or fewer dwelling units is not considered a facility and is not subject to this administrative regulation unless:

1. It is part of a larger installation, such as an army base, company housing project, or a [~~contiguous~~] group of houses subject to condemnation by a federal, state, or local agency; or

2. It is to be used for an industrial, commercial, institutional, or public purpose or as a residence having more than four (4) dwelling units within one (1) year after it is renovated, or the building site is to be used for a similar purpose within one (1) year after the building is demolished.

(b) A building, structure, or installation that is used both as a facility and as a residence having four (4) or fewer dwelling units is subject to this administrative regulation only in that part which is used as a facility. Common areas such as a basement or maintenance room are treated as part of the facility.

(26) "Facility component" means any part of a facility, including equipment.

(27) "Fax" means a facsimile machine, or a device which transmits printed or other visual material over a telephone line.

(28) "Friable ACM" means ACM which, when dry, can be crumbled, pulverized, or reduced to powder by forces expected to occur during a demolition or renovation [~~operation~~]. This term includes normally nonfriable ACM such as packings, gaskets, resilient floor coverings, mastics, asphaltic roofing, and transite or other cementitious ACM that is in poor condition or that will become friable during the project due to sanding, grinding, crumbling, or abrading. For transite and other forms of cementitious ACM, it also includes those materials that will be broken during the project.

(29) "Fugitive source" means a source of emissions not controlled by air pollution control equipment.

(30) "Glove bag" means a sealed plastic compartment at least six (6) mils thick and having one (1) or more inward-projecting longsleeve rubber gloves, and one (1) or more inward-projecting waterwand sleeves or other means of wetting the ACM to be removed. A glove bag is constructed and installed so that it surrounds the object or area from which the ACM is to be removed and contains all the asbestos fibers released during the removal process.

(31) "Grinding" means to reduce to powder or small fragments and includes mechanical chipping or drilling.

(32) "HEPA filtration" means high efficiency particulate air filtration found in respirators, vacuum systems, and negative-pressure ventilation units, which is capable of filtering particles of three-tenths microns (0.3μ) in size with 99.97 percent efficiency.

(33) "Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture, and is suspect ACM.

(34) "HVAC" means a heating, ventilation, and air conditioning system.

(35) "Inactive waste disposal site" means a disposal site or portion thereof where additional waste ACM has not been deposited within the past twelve (12) months.

(36) "In poor condition" means that the binding of the material is deteriorating as indicated by peeling, cracking, crumbling, or erosion.

(37) "Installation" means a building or structure or a group of buildings or structures at a single demolition or renovation site that is under the control of the same owner or operator.

(38) "Leak-tight" means that solids, liquids, or dust cannot escape or spill out.

(39) "Lockdown agent" means a protective coating or sealant which is applied to a surface from which ACM has been removed to encapsulate residual fibers.

(40) "Long-term notification" means the method used to advise the cabinet that a number of nonscheduled renovations, each of which is below the threshold amount, are expected to occur at a facility over a period of time but the specific dates are as yet unknown.

(41) "Malfunction" means a sudden and unavoidable failure of air pollution control equipment, or process equipment, or failure of a process to operate in a normal or usual manner so that asbestos emissions are increased. A failure of equipment or process is not a malfunction if it is caused by poor maintenance, careless operation, or other preventable upset condition.

(42) "Manufacturing" means the combining of commercial asbestos or, in the case of woven friction products, the combining of textiles containing commercial asbestos, with another material, including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

(43) "Mil" means one one-thousandth (1/1000) of an inch.

(44) "NESHAP" means National Emission Standards for Hazardous Air Pollutants, as set forth in 40 CFR 61, Subpart M, as amended by Federal Register 55 FR 48406, November 20, 1990.

(45) "NESHAP work" means:

1. A planned renovation at a facility, including a nonscheduled renovation carried out under a long-term notification, if the total amount of friable ACM removed in the most recent twelve (12) months, including the current work being performed, will equal or exceed the threshold amount;

2. An emergency renovation at a facility which involves the removal of friable ACM equal to or greater than the threshold amount; or

3. All demolitions at a facility.

(46) "Nonfriable ACM" means ACM which, when dry, cannot be crumbled, pulverized, or reduced to powder by forces expected to occur during a demolition or renovation operation. This term includes materials such as packings, gaskets, resilient floor coverings, mastics, asphaltic roofing, and transite or other forms of cementitious ACM which are not in poor condition and which will not become friable during the project due to sanding, grinding, crumbling, or abrading. For transite and other forms of cementitious ACM, it also includes those materials which will not be broken during the project.

(47) "Nonfriable removal" means the removal of nonfriable ACM such as packings, gaskets, resilient floor coverings, mastics, asphaltic roofing, and transite or other forms of cementitious ACM which are not in poor condition and will not become friable in the removal process due to sanding, grinding, crumbling, or abrading. For transite and other forms of cementitious ACM, it also includes those materials which will not be broken during the removal process.

(48) "Non-NESHAP work" means a renovation at a facility which involves the removal of any amount of nonfriable ACM, or an amount

of friable ACM which, if added to the total amount of friable ACM removed in the most recent twelve (12) months, is below the threshold amount.

(49) "Nonscheduled renovation" means a renovation which is necessitated by the routine failure of equipment, and which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

(50) "Ordered demolition" means the demolition of a facility under a state or local government order issued because the facility is structurally unsound and in danger of imminent collapse.

(51) "Outside air" means the air outside buildings or structures.

(52) "Particulate ACM" means finely divided particles of asbestos or ACM.

(53) "PCM" (phase contrast microscopy) means a method used to analyze air samples for the presence of asbestos. The PCM method required for use in Section 6 of this administrative regulation is NIOSH Method 7400, which is incorporated by reference in Section 14(4) of this administrative regulation.

(54) "Planned renovation" means a renovation which is prearranged to occur during a given period of time, or which can be predicted to occur during a given period of time based on operating experience.

(55) "PLM" (polarized light microscopy) means the method required to be used to determine the percentage of asbestos by area contained in bulk samples of suspect ACM, and is specified in 40 CFR 763, Subpart F, Appendix A, Section 1, which is incorporated by reference in Section 14(2)(a) of this administrative regulation.

(56) "Polyethylene sheeting" or "polyethylene bags" means sheeting or bags made of polyethylene or equivalent material, such as griflon, which is rated at six (6) mils or more and has a true minimum thickness of four and one-half (4.5) mils.

(57) "Publicly owned facility" means a facility owned by the state, a political subdivision of the state, a municipality, or other public entity.

(58) "Remove" means to take ACM from a facility or facility component. It includes the taking of components or parts of components which are covered with or contain ACM, or the moving of these components or ACM from one place in the facility to another.

(59) "Renovation" means altering a facility or facility component, including the removal of ACM from the facility or component and any related handling operations, without wrecking or taking out a load-supporting structural member.

(60) "Resilient floor covering" means floor tile and sheet floor covering, including associated adhesives or mastics, made from asphalt, vinyl, or other resilient material and containing more than one (1) percent asbestos as determined by PLM.

(61) "Roadway" means a surface on which vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

(62) "Shower room" means a room between the clean room and the equipment room in the worker decontamination enclosure system with hot and cold running water controllable at the tap and suitably arranged for complete showering during decontamination.

(63) "Source" means a facility which emits or has the potential to emit airborne asbestos fibers.

(64) "Strip" means to remove ACM from a facility component. It refers to the process of removing ACM from pipes, conduits, boilers and other components, and includes the removal of paint, mastics, and floor coverings.

(65) **"Structural member" means any load-supporting member of a facility, such as a beam or load-supporting wall; or any nonload-supporting member of a facility, such as a ceiling or nonload-supporting wall.**

(66) "Structure" means a facility or building or a major portion thereof, such as a building wing or portion of a landfill where waste ACM has been deposited, or an object which has been constructed, such as a pipeline network.

(67) [~~(66)~~] "Survey" means an inspection performed prior to a renovation or demolition to determine the asbestos content of all suspect material and the quantity of ACM that will be disturbed.

(68) [~~(67)~~] "Suspect ACM" or "suspect material" means material which could contain or be contaminated with asbestos, including but not limited to fireproofing materials, acoustical and thermal insulation, drywall and surfacing materials used on walls and ceilings, resilient floor coverings, roofing materials, cement products, fire doors, tape, cloth, gaskets, and sealants.

(69) [~~(68)~~] "TEM" (transmission electron microscopy) means a method used to analyze air samples, or output materials from conversion operations, for the presence of asbestos. The method required to be used for analyzing air samples in Section 6 of this administrative regulation is the AHERA method specified at 40 CFR 763, Subpart E, Appendix A, which is incorporated by reference in Section 14(2)(b) of this administrative regulation.

(70) [~~(69)~~] "Threshold amount" means 260 linear feet of ACM on pipes, or 160 square feet of ACM on other components, or thirty-five (35) cubic feet of ACM which is dislodged and cannot be measured in linear or square feet.

(71) [~~(70)~~] "Visible emission" mean a particulate emission, such as dust, which can be seen without the aid of instruments and which results from a process or disturbance of ACM. This includes removed friable ACM which has not been contained in leak-tight wrapping, but does not include condensed, uncombined water vapor (i.e., steam).

(72) [~~(71)~~] "Waste ACM" means asbestos tailings or other waste products which contain asbestos and are generated by a source, including filters from control devices and bags or other packaging contaminated with asbestos. For demolition and renovation operations, this term includes removed friable and nonfriable ACM, contaminated debris, and materials contaminated with asbestos, such as disposable equipment and clothing, polyethylene sheeting used to contain asbestos emissions, and contaminated liquids used in the work area, shower room, and waste-loadout area.

(73) [~~(72)~~] "Waste generator" means an owner or operator of a facility whose process or action, including a renovation or demolition operation, produces waste ACM.

(74) [~~(73)~~] "Waste-loadout system" means that part of a containment which is separated from the work area and from the outside by airlocks with sufficient space between them to accommodate the largest waste parcel, and which is used for washing bags and loading them into containers prior to transport and disposal.

(75) [~~(74)~~] "Work area" means the area within a containment where the abatement takes place, and which is separated from the decontamination and waste-loadout systems by airlocks. For removals that do not require a containment, it means the area in the immediate vicinity of the removal.

(76) [~~(75)~~] "Working day" means Monday through Friday, including holidays which fall on Monday through Friday.

Section 2. Applicability. This administrative regulation shall apply to owners or operators, contractors, supervisors, laboratories, air monitoring personnel, building inspectors, training providers, waste handlers and transporters, and road construction companies, as specified in Sections 3 through 13 of this administrative regulation.

Section 3. Universal Building Standard. Owners or operators of a facility shall comply with the following:

(1) Except as noted in subsections (2) and (3) of this section, remove and dispose of any friable ACM that becomes dislodged and falls to the floors, walkways or other surfaces of a facility before allowing anyone to enter the facility except:

(a) An employee or contractor who is qualified pursuant to Section 6 of this administrative regulation to remove the ACM;

(b) A consultant hired to check for compliance with this administrative regulation; or

(c) A representative of a regulatory or law enforcement agency

with authority to enter.

(2) ACM that becomes dislodged in one (1) or more portions of a large facility shall not affect the entire facility if access to the affected portions is restricted, pursuant to subsection (1) of this section.

(3) If ACM becomes dislodged in an area of a facility where evacuation of unauthorized personnel, as prescribed in subsection (1) of this section, could present a safety hazard or cause damage to equipment, the following precautions shall be taken until the ACM can be removed:

(a) The ACM shall be wetted and covered with polyethylene sheeting, unless these actions would pose a safety hazard or cause damage to equipment; and

(b) Air monitoring shall be performed in the immediate vicinity of the ACM until the ACM is removed to ensure that asbestos concentrations do not exceed levels of one (1) fiber per ten (10) cubic centimeters of all sampled air. The National Institute of Occupational Safety and Health (NIOSH) Sampling Method 7400, or equivalent, shall be used. This method is defined in Section 1(53) of this administrative regulation.

(4) ACM shall be removed and disposed of in accordance with Section 6 of this administrative regulation.

Section 4. Standard for Roadways, Insulating Materials, and Spraying Operations. (1) Standard for roadways. A person shall not construct or maintain a roadway with asbestos tailings or waste ACM unless, for asbestos tailings:

(a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine);

(b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder, and the road surface is maintained at least one (1) time per year to prevent dust emissions; or

(c) It is encapsulated in asphalt concrete meeting the specifications contained in Section 804.04 of Standard Specifications for Road and Bridge Construction, Kentucky Transportation Cabinet, Department of Highways, 1991 Edition, which has been incorporated by reference in Section 14(6) of this administrative regulation.

(2) Standard for insulating materials. An owner or operator shall not install or reinstall on a facility or facility component insulating materials containing ACM if the materials are either molded and friable or wet-applied and friable after drying.

(3) Standard for spraying operations.

(a) An owner or operator shall not spray insulating or other materials containing ACM on buildings, structures, pipes, conduits or other facility components, including machinery or equipment, unless:

1. The asbestos fibers in the materials are encapsulated with a bituminous or resinous binder during spraying and the materials are not friable after drying; and

2. The cabinet is notified and provided the following information at least ten (10) working days before the spraying operation begins:

a. Name, address, and telephone number of owner or operator and spraying contractor; and

b. Location of spraying operation, date it will begin, and approximate duration.

(b) For ACM sprayed on machinery or equipment, an alternative method may be approved by the cabinet if the materials are not friable after drying and if the cabinet is notified and provided the following information at least twenty (20) calendar days before the spraying operation begins:

1. Name, address, and telephone number of owner or operator and spraying contractor;

2. Location of spraying operation, date it will begin, and approximate duration; and

3. Procedures that will be followed to ensure that no visible emissions are discharged to the outside air from the spraying operation, or that the methods specified in Section 12 of this administrative regulation will be used to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air.

(c) Exemptions. Owners and operators of spraying operations shall be exempt from the notification and permitting requirements for construction or modification of stationary sources of 401 KAR 50:035.

Section 5. Standard for Asbestos Mills and for Manufacturing and Fabricating Operations. (1) Applicability. This section shall apply to:

(a) Owners or operators of asbestos mills;

(b) Owners or operators of manufacturing operations using commercial asbestos in the manufacture of products, including but not limited to cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials; cement products; fireproofing and insulating materials; friction products; paper, mill-board, and felt; floor coverings; paints, coatings, caulks, adhesives, and sealants; plastics and rubber materials; chlorine utilizing asbestos diaphragm technology; shotgun shell wads; and asphalt concrete; and

(c) Owners or operators of fabricating operations using commercial asbestos in the fabrication of products, including but not limited to:

1. Cement building products;

2. Friction products. This primarily consists of operations which fabricate pads and linings for brakes and clutches. It includes rebuilding operations which remove and replace worn pads and linings, but does not include service operations which only remove and install assembled parts on motor vehicles; and

3. Cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.

(2) Standard. Each owner or operator subject to this section shall:

(a) Discharge no visible emissions to the outside air from these operations or from a building or structure in which these operations are conducted or from any fugitive sources, or shall use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air.

(b) Monitor potential sources of asbestos emissions from all parts of the facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least one (1) time each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least fifteen (15) seconds duration for each source of emissions;

(c) Inspect air cleaning devices at least one (1) time a week for proper operation and for signs of potential malfunction, such as tears, holes, or abrasions in filter bags, and for dust deposits outside the bags. For air cleaning devices which cannot be inspected on a weekly basis the owner or operator shall submit to the cabinet and revise as necessary a maintenance schedule and recordkeeping plan, along with an explanation of why the device cannot be inspected weekly;

(d) Maintain records which show the results of visible emission monitoring and air cleaning device inspections, to include the following:

1. Date and time of each inspection;

2. Presence or absence of visible emissions;

3. Condition of fabric filters, including presence of any tears, holes, or abrasions;

4. Presence of dust deposits on clean side of fabric filters;

5. Brief description of malfunctions or potential malfunctions and corrective actions taken, including date and time; and

6. Daily hours of operation for each air cleaning device.

(e) Retain all maintenance records for at least two (2) years, and make them available for inspection by the cabinet upon request; and

(f) Submit a quarterly report to the cabinet for any calendar quarter in which visible emissions occur. This report shall contain all

monitoring and inspection results for the entire quarter and shall be postmarked no later than thirty (30) calendar days following the end of the quarter.

(3) Owners or operators to whom this section applies shall comply with the reporting requirements in Section 13 of this administrative regulation and with the waste disposal requirements in Section 8 (for asbestos mills) and Section 9 (for manufacturing and fabricating operations) of this administrative regulation.

Section 6. Standard for Demolition and Renovation operations. (1) Applicability.

(a) This section shall apply to the following persons:

1. Owners or operators of a facility that will be demolished or renovated;
2. Contractors who perform asbestos removal or abatement, and their supervisors;
3. Air monitors who collect and analyze air samples taken during a renovation or demolition;
4. Laboratories that analyze air samples taken during a renovation or demolition;
5. Laboratories that analyze bulk samples of suspect material taken prior to or during a renovation or demolition;
6. Persons who perform asbestos surveys prior to or during a renovation or demolition;
7. Owners or operators of waste disposal sites permitted to accept waste ACM from a renovation or demolition;
8. Transporters of waste ACM taken from a renovation or demolition; and
9. Providers of training courses approved by the cabinet for contractor certification.

(b) To determine which provisions of this section apply to a specific operation, the owner or operator shall:

1. Determine the type of operation to be performed (i.e., a planned renovation, emergency renovation, or ordered demolition);
2. Determine if the operation will disturb any friable or nonfriable ACM, as prescribed in subsection (2)(a) of this section; and
3. Determine the amount of friable ACM that will be disturbed, as prescribed in subsection (2)(a) of this section, to decide if the project involves NESHAP work as defined in Section 1(45) of this administrative regulation or non-NESHAP work as defined in Section 1(48) of this administrative regulation.
4. After the above determinations have been made, the Applicability Table in paragraph (d) of this subsection shall be used to determine which provisions of this section apply to the owner or operator and contractor.

(c) Persons other than the owner or operator, or contractor, to whom this section applies shall comply with the following provisions:

1. Air monitors who collect and analyze air samples taken during a renovation or demolition shall comply with subsections (3)(c)16, (3)(d)9, and (5)(g)5 of this section;
2. Laboratories that analyze air samples taken during a renovation or demolition shall comply with subsections (3)(c)16. (d)9, and (5)(g)6 of this section;
3. Laboratories that analyze bulk samples of suspect material taken prior to or during a renovation or demolition shall comply with subsections (2)(a)4 and (5)(g)6 of this section;
4. Persons who perform asbestos surveys prior to or during a renovation or demolition shall comply with subsection (2)(a) of this section;
5. Owners and operators of waste disposal sites permitted to accept waste ACM from a renovation or demolition shall comply with subsection (3)(c)14f and (d)7 of this section;
6. Transporters of waste ACM taken from a renovation or demolition shall comply with subsection (3)(c)14 and (d)7 of this section; and
7. Providers of training courses approved by the cabinet for contractor certification shall comply with subsection (5)(h) of this section.

(d) Applicability Table.

Type of Work	Provisions of Section 6 Which Apply to the Owner or Operator	Provisions of Section 6 Which Apply to the Contractor
NESHAP Renovations	Survey and Notification requirements in subsection (2)	Survey and Notification requirements in subsection (2)
	Removal and Supervisor requirements in subsection (3)(a) & (b)	Removal and Supervisor requirements in subsection (3)(a) & (b)
	*Work practice requirements in subsection (3)(c)1-10	Work practice requirements in subsection (3)(c), (f), (g), & (h)
	Work practice requirements in subsection (3)(c)11-14	Recordkeeping requirements in subsection (4)
	*Work practice requirements in subsection (3)(c)15-17	Certification, training, and supervisor listing requirements in subsection (5)(a)-(g)
	Work practice requirements in subsection (3)(f), (g), and (h)	
	*Recordkeeping requirements in subsection (4)	
	*Certification requirements in subsection (5)(a)-(f)	
	Training requirements in subsection (5)(g)1,2, 4,5,6	
	*Supervisor listing requirements in subsection (5)(g)3	
NESHAP Demolitions at or above Threshold	Survey and Notification requirements in subsection (2)	Survey and Notification requirements in subsection (2)
	Removal and Supervisor requirements in subsection (3)(a) & (b)	Removal and Supervisor requirements in subsection (3)(a) & (b)
	*Work practice requirements in subsection (3)(d)1-4	Work practice requirements in subsection (3)(d),(f),(g), and (h)
	Work practice requirements in subsection (3)(d)5-7	Recordkeeping requirements in subsection (4)
	*Work practice requirements in subsection (3)(d)8-10	Certification, training, and supervisor listing requirements in subsection (5)(a)-(g)

	Work practice requirements in subsection (3)(f),(g), and (h)	
	*Recordkeeping requirements in subsection (4)	
	*Certification requirements in subsection (5)(a) through (f)	
	Training requirements in subsection (5)(g)1,2, 4,5, and 6	
	*Supervisor listing requirements in subsection (5)(g)3	
Non-NESHAP Renovations and Below-Threshold Demolitions	Survey requirements in subsection (2)(a)	Survey requirements in subsection (2)(a)
	Notification requirements in subsection (2)(b), for demolitions only	Notification requirements in subsection (2)(b), for demolitions only
	*Removal requirements in subsection (3)(a)	Removal requirements in subsection (3)(a)
	*Reasonable precautions and other work-practice requirements in subsection (3)(e) through (h)	Reasonable precautions and other work-practice requirements in subsection (3)(e) through (h)
	*Recordkeeping requirements in subsection (4)	Recordkeeping requirements in subsection (4)

(*) Denotes exemption for utility companies, as provided in paragraph (e)1 of this subsection.

(e) Exemptions.

1. Facilities which qualify as utilities under KRS 224.20-320 shall be exempt from the certification, work-practice, and recordkeeping requirements that are not required under NESHAP when using their employees to perform renovations or demolitions in their facilities. These exemptions are indicated by an asterisk (*) in the Applicability Table in paragraph (d) of this subsection.

2. Owners or operators and contractors of a facility to be demolished or renovated shall be exempt from the notification and permitting requirements for construction or modification of stationary sources contained in 401 KAR 50:035, except for those renovations which qualify as a modification pursuant to 401 KAR 50:010, Section 1(33).

(2) Survey and notification requirements.

(a) Survey requirements. Before beginning a renovation or demolition [~~operation~~], the owner or operator shall have a survey of suspect materials performed. A person shall not perform a survey, or cause or allow a survey to be performed, which violates a provision of this paragraph.

1. For all demolitions, and for renovations where suspect ACM to be disturbed equals or exceeds the threshold amount, the survey shall be done by an inspector or management planner who is currently accredited pursuant to 401 KAR 58:005. The AHERA inspection procedures found in 40 CFR 763, Subpart E, which are incorporated by reference in Section 14(2)(c) of this administrative regulation, shall be used for conducting the survey unless an equivalent, alternative procedure is requested by the person performing the survey and approved by the cabinet.

2. For renovations where suspect ACM to be disturbed is below the threshold amount but exceeds the de minimis amount, including renovations which qualify as NESHAP work, the survey shall:

a. Be performed by an inspector currently accredited pursuant to 401 KAR 58:005, or by a supervisor who has met the training requirements specified in subsection (5)(g)1 and 2 of this section; and

b. Include at least one (1) bulk sample for nonfriable suspect material and three (3) bulk samples for friable suspect material from each homogeneous area.

3. For renovations where suspect ACM to be disturbed will not exceed the de minimis amount, the survey may be performed by the owner or operator or his representative. At least one (1) bulk sample for suspect material shall be taken from each homogeneous area.

4. For all surveys, bulk samples of suspect ACM shall be analyzed using PLM by a laboratory which meets the requirements in subsection (5)(g)6b of this section. Homogenous areas of suspect material shall be assumed to be ACM unless all bulk samples taken of the material prove it is not.

5. Areas where bulk samples are removed during the survey shall be encapsulated or otherwise sealed to prevent fiber release.

6. If the owner or operator chooses to assume that all suspect material is ACM and treats it accordingly, and is able to determine the amount of suspect material that will be disturbed in the operation, the owner or operator shall be exempt from the requirements of this paragraph.

(b) Notification requirements. The initial notice and subsequent renotifications of a renovation or demolition [~~operation~~] shall be made by the owner or operator, or the contractor, and shall comply with the following:

1. Provide the cabinet with written notice of intent to demolish or renovate a facility, as required below. Notice shall be provided on Form DEP-7036, Ten Day Report Form For Prior Notification Of Asbestos Abatement Activities, which has been incorporated by reference in Section 14(1)(b) of this administrative regulation.

2. Provide a notice for all demolitions and attach a copy of the building survey, even if the inspection reveals no ACM in the facility. If ACM is present and the removal takes place more than thirty (30) calendar days before the demolition, separate notices shall be required for the removal and the demolition.

3. Provide a notice for renovations if the total amount of friable ACM removed at a facility in the most recent twelve (12) months, including the current work to be performed, will equal or exceed the threshold amount, except that:

a. Notice shall not be required for removals that do not exceed the de minimis amount; and

b. For emergency renovations, notice shall not be required unless the current work to be performed will equal or exceed the threshold amount.

4. Provide a revised notice if information contained in the initial or prior notice changes. The revised notice shall be provided before any activity involving the change begins. If there is an increase or decrease in the estimated amount of ACM to be removed, a revised notice shall be required only if the change is more than twenty (20) percent of the original estimate or more than the threshold amount, whichever is smaller.

5. Deliver initial and revised notices to the cabinet by U.S. Postal Service, commercial delivery service, or hand delivery, unless otherwise indicated, according to the following timetable:

a. Planned renovations or demolitions.

(i) If the operation is a planned demolition or a planned renovation, the initial notice shall be delivered or postmarked at least ten (10) working days but not more than thirty (30) calendar days before

the operation begins. If the start date provided in the most recent notice changes to a later date, the cabinet shall be notified by phone or Fax at least one (1) working day before the old start date, and the revised written notice shall immediately follow. If the start date changes to an earlier date, the revised notice shall be delivered or postmarked at least ten (10) working days before the new start date.

(ii) If the operation is a planned renovation that will affect several locations in the facility and span several weeks or months, and removal is expected to occur each working day or on specified days, such as every Monday and Wednesday, this shall be stated on the initial notice and a written summary shall be submitted to the cabinet each month and shall be delivered or postmarked no later than ten (10) working days following the end of the month in which the activity occurred. The summary shall be submitted on Form DEP-5030, Monthly Asbestos Removal Report, which is incorporated by reference in Section 14(1)(c) of this administrative regulation. It shall include a breakdown for each day of activity showing the date, the type and amount of ACM removed, the location in the facility from which it was removed, the name of the contractor if more than one (1) contractor was provided on the initial notice, and any changes from the initial notice that would normally be reported on a revised notice.

b. Ordered demolitions or emergency renovations.

(i) For compliance with the notification requirements in this subclause only, ordered demolitions may include demolitions necessitated by a sudden, unexpected event which, if not immediately attended to, would likely present a safety or public health hazard, expose property to serious damage, or impose an unreasonable financial burden.

(ii) If the operation is an ordered demolition, or an emergency renovation which equals or exceeds the threshold amount, the cabinet shall be notified by phone or Fax no later than the day the operation begins, and a written notice shall immediately follow. If the operation begins on a nonworking day or a state holiday, notification shall be made during the first hour of business on the first working day (that is not on a state holiday) after the operation begins.

(iii) If the start date provided in the most recent notice changes, the cabinet shall be notified by phone or Fax no later than the old or new start date, whichever is earlier, and a revised written notice shall immediately follow.

c. Long-term notifications.

(i) Long-term notifications shall be delivered at least ten (10) working days but no more than thirty (30) calendar days before the effective date of the notice. A long-term notification may cover up to twelve (12) months, but shall not extend past the end of a calendar year. It shall include only nonscheduled renovations that are below the threshold amount, and shall not include demolitions, emergency renovations, or other renovations which equal or exceed the threshold amount.

(ii) If the long-term notification includes a number of nonscheduled renovations occurring randomly throughout the notification period, an additional, separate notice shall be provided for each renovation and shall be delivered no later than one (1) working day before the renovation begins.

(iii) If the long-term notification includes a number of nonscheduled renovations occurring randomly throughout the notification period, and the contractor is located at the facility on a regular basis, separate notice shall be provided for each renovation and shall be delivered as prescribed in subclause (ii) of this clause, or may be telephoned to the appropriate regional office of the cabinet no later than one (1) working day, which is not a state holiday, before the renovation begins. A written summary shall be submitted to the cabinet each month and shall be delivered or postmarked no later than ten (10) working days following the end of the month in which the activity occurred. This summary shall be submitted on Form DEP-5030, and shall include a breakdown for each day of activity showing the date, the type and amount of ACM removed, the location in the facility from which it was removed, the name of the contractor if more than one (1) contractor was provided on the long-term notification, and any changes from the long-term notification that would normally be reported on a revised notice.

d. For nonfriable removals performed according to subsection (3)(g)1 of this section, the cabinet shall be notified at least one (1) working day but no more than thirty (30) calendar days before the operation begins. Notice may be delivered as prescribed in subparagraph 5 of this paragraph, or by Fax with a telephone call to confirm receipt of the Fax.

6. A demolition or renovation **[~~operation~~]** shall not begin or end on a date other than the date provided in the most recent notice. If the end date changes after the project has begun, the cabinet shall be notified at least one (1) working day, that is not a state holiday, prior to the old or new end date, whichever is earlier. Notice may be delivered as prescribed in subparagraph 5 of this paragraph, or by Fax with a telephone call to confirm receipt of the Fax.

7. The initial notice of a renovation or demolition **[~~operation~~]** shall be cancelled and a new ten (10) day notice shall be provided to the cabinet if:

a. The project is postponed and the new start date is unknown;

b. The project is postponed and the new start date is after the initial ending date; or

c. The project start date has been revised three (3) times.

(3) Work-practice requirements. An owner or operator, or contractor, as specified in the applicability table in subsection (1)(d) of this section, shall comply with the following:

(a)1. Remove all ACM from a facility that is to be demolished or renovated before any activity begins that will break up, dislodge, or similarly disturb the ACM, or prevent it from being removed at a later date, unless:

a. The ACM is on a facility component encased in concrete or similar material which prevents removal before demolition or renovation;

b. The ACM was not accessible for testing and was not, therefore, discovered until after demolition or renovation began and, as a result of the operation, cannot be safely removed;

c. The operation is an ordered demolition and the ACM cannot be safely removed beforehand; or

d. The operation is a normal demolition, and not an intentional burning, and the only material which tests positive for asbestos is the mastic used to secure the flooring. If the mastic is covered with flooring and is not in poor condition, the facility may be demolished without removing the mastic and all debris may be disposed in a construction/demolition landfill.

2. ACM that is not removed prior to demolition, pursuant to subparagraph 1a, b, or c of this paragraph, shall be removed and disposed during or immediately after demolition together with any contaminated debris.

3. ACM that is not removed prior to renovation, pursuant to subparagraph 1a or b of this paragraph, but is disturbed during the renovation, shall be removed and disposed as soon as practical after disturbance.

4. If a facility is intentionally burned to facilitate a demolition, all ACM, including mastics, shall be removed prior to burning.

(b) A supervisory person meeting the requirements specified in subsection (5)(g)1 and 2 of this section shall be present and available to cabinet inspectors at all times **whenever ACM is being removed or prepared for disposal at the following operations, and a diploma showing evidence of the required training shall be made available for inspection:**

1. All renovations which qualify as NESHAP work and which exceed the de minimis amount; and

2. All demolitions which involve the removal of friable ACM in amounts which equal or exceed the threshold amount. **[~~during any removal which qualifies as NESHAP work and which exceeds the de minimis amount. A diploma showing evidence of the required training shall be made available on site for inspection.~~]**

(c) The following procedures shall be used when performing a NESHAP renovation:

1. Establish a containment area to include a worker decontamination system and a work area where the removal shall occur. The decontamination system shall consist of a clean room, shower room, and equipment room, separated from each other and from the work area by airlocks. Workers leaving the work area shall progress through an airlock to the equipment room, through a second airlock to the shower room, and through a third airlock to the clean room before exiting to the outside. This system may be used for waste-loadout if each waste parcel is small enough so that no two (2) airlocks will be opened at the same time. If a waste-loadout system is used, it shall include a room for washing bags and loading them into containers for disposal, and shall be separated from the work area and from the outside by airlocks with sufficient space between them to accommodate the largest waste parcel. Water used to decontaminate personnel, equipment, or waste parcels shall be treated as waste ACM, or filtered through a five micron (5μ) filter before discharging into a sanitary sewer.

2. Existing walls and ceilings shall be used for containment barriers wherever possible. Where they do not exist, barriers shall be constructed of polyethylene sheeting attached securely in place. If wood framing is used to support the barriers, the sheeting shall be located on the side of the framing closest to the work area.

3. All furniture and other objects shall be removed from the containment area if possible, and all exposed surfaces shall be cleaned. Objects not removed shall be wet-wiped and tightly sealed with polyethylene sheeting to prevent contamination during the removal operation.

4. All openings in and adjacent to the containment area, such as windows, doorways, elevator openings, air ducts and grilles, skylights, and openings created by the construction of barriers, shall be tightly sealed with polyethylene sheeting and waterproof tape to form critical barriers. Materials to be removed shall not be covered or sealed over.

5. All polyethylene sheeting shall be secured using waterproof tape, glue, furring strips, or other means to ensure a secure, leak-tight seal. Spray polyethylene may be used in lieu of sheeting for those applications that are difficult to seal with sheeting, such as critical barriers.

6. At least two (2) layers of polyethylene sheeting shall be installed on all floor surfaces within the containment area. Sheeting shall extend at least twelve (12) inches up the sidewalls and shall be sized to minimize seams. No seams shall be located at wall-to-floor joints.

7. At least two (2) layers of polyethylene sheeting shall be installed on existing walls and ceilings within the work area and waste-loadout area. At least one (1) layer of sheeting shall be installed on polyethylene barriers and on walls and ceilings throughout the decontamination area, except that two (2) layers shall be required if this area is used for waste-loadout. Sheeting shall extend at least twelve (12) inches beyond wall-to-wall and wall-to-ceiling joints and shall be sized to minimize seams. There shall be no seams located at wall and ceiling surface joints.

8. At least one (1) window, one (1) square foot in size or larger, shall be constructed in a safe and accessible location to permit viewing of as much of the removal activity as possible from outside the containment area.

9. All HVAC equipment opening into or passing through the containment area shall be shut down, locked out, and tagged to advise personnel not to activate the equipment. All intake and exhaust openings and seams in system components shall be tightly sealed with sheeting or spray polyethylene in accordance with subparagraph 5 of this paragraph.

10. Negative-pressure ventilation units with HEPA filtration shall be installed in the work area and operated continuously from the time the containment area is established until acceptable final clearance air monitoring results are obtained. The number of units shall be sufficient to maintain negative pressure throughout the containment area and to provide at least one (1) workplace air change every fifteen (15) minutes. Other negative-pressure air systems that are equivalent in controlling asbestos emissions may be used with prior approval of the cabinet.

11. Warning signs shall be displayed at all approaches to the containment area. Signs shall be twenty (20) inches high by fourteen (14) inches wide and shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of twenty-five (25) feet.

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING
ARE REQUIRED IN THIS AREA

12.a. When removing or stripping friable ACM from a facility or facility component, the material shall be adequately wet prior to and during removal and carefully lowered to the ground to minimize disturbance and release of asbestos fibers. If the material being removed contains amphiboles, it shall be adequately wet using a mixture of water, surfactant, and an encapsulant. If the removal takes place more than fifty (50) feet above the ground or containerization level, the ACM shall be transported to the ground via leak-tight chutes **which feed directly into disposal bags. If glove bags are used and the waste is sealed in the glove bag at the elevated work area, regardless of the height, the waste shall be considered to be containerized until the glove bag is lowered to the ground or containerization level.** Mechanical man-lifts may be used in lieu of leak-tight chutes for lowering transite or similar materials that are normally nonfriable. Friable materials that are removed shall be kept adequately wet until collected and bagged for disposal.

b. Facility components that are removed intact or in sections shall be adequately wet immediately before and during the cutting or disjoining operation and shall be carefully lowered to the ground to minimize disturbance and release of asbestos fibers. Removed components shall be kept adequately wet until bagged or wrapped for disposal.

c. Facility components may be removed, transported, stored, disposed, or reused without stripping if the ACM is not damaged or disturbed, and if the component is encased in leak-tight wrapping and properly labeled when being transported, stored, or disposed. When facility components are removed in this manner and no other ACM is being removed, neither a negatively-pressurized containment nor personnel decontamination is required.

13.a. Wetting may be suspended during removal and preparation for disposal if all friable ACM is removed intact and undisturbed, and is encased in leak-tight wrapping prior to removal. Wetting may also be suspended, if an equivalent method for controlling emissions is used, when:

(i) The ambient temperature in the work area is below thirty-two (32) degrees Fahrenheit or zero degrees Centigrade;

(ii) Wetting would present a safety hazard; or

(iii) Wetting would cause damage to equipment.

b. If wetting will be suspended due to freezing temperatures, the contractor shall notify the cabinet by phone before the dry removal begins to explain the equivalent method that will be used to control emissions and to request approval for its use. If wetting will be suspended because it will present a safety hazard or cause damage to equipment, the contractor shall submit a written alternative to the cabinet at least ten (10) working days prior to the proposed dry removal and shall include a description of the proposed method which demonstrates that it is equivalent to wetting in controlling asbestos emissions.

c. The contractor shall not proceed with the dry removal until the

proposed equivalent method is reviewed and approved by the cabinet.

14. Waste ACM shall be collected, prepared, transported, and disposed as follows:

a.(i) ACM that has been stripped or removed from a facility or facility component, including facility components containing ACM that have been removed intact or in sections, shall be kept adequately wet until double-wrapped or double-bagged in leak-tight polyethylene.

(ii) Waste that has been double-wrapped or double-bagged shall be placed in sealed, rigid containers (such as steel or fiber drums or heavy duty cardboard boxes) or, it may be transported using roll-off boxes, semitrailers, or other enclosed vehicles if adequate measures are taken to prevent the wrapping or bagging from rupturing during loading and unloading, transport, and disposal. Waste ACM to be placed in rigid containers may be single-bagged or single-wrapped if the container is specially designed for asbestos waste and includes a second bag for that purpose.

(iii) Bags and wrapped parcels of waste ACM shall be washed in the waste-loadout area, or in the shower room of the decontamination area if this is used for waste-loadout, before being placed in rigid containers, or before being loaded into roll-off boxes or other enclosed vehicles.

(iv) Wrapping and containerizing of waste materials shall be done in a manner which prevents the release of asbestos fibers into the outside air, and which prevents the outside of the wrapping or container from being contaminated with asbestos fibers.

b. Waste ACM that is transported and disposed off the facility site shall have a warning label and a separate label showing the name of the waste generator and the location where the waste was generated. These labels shall be applied to each rigid container if the container is disposed with the waste. Otherwise, the labels shall be applied to the bags or wrapping. For materials that are double-wrapped or double-bagged with clear polyethylene sheeting, labels shall be applied to the inside wrap or bag and shall be legible through the outer wrap or bag. Warning labels shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of three (3) feet.

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

c. Waste ACM shall be deposited as soon as is practical by the waste generator at a waste disposal site operated according to Section 10 of this administrative regulation, or at a site approved by the cabinet that converts waste ACM into nonasbestos material according to Section 7 of this administrative regulation.

d. Vehicles used to transport waste ACM shall be marked with signs during the loading and unloading of waste ACM. The warning signs used outside containment areas, as specified in paragraph (c)11 of this subsection, may be used, or separate signs may be used. If separate signs are used, they shall be twenty (20) inches high by fourteen (14) inches wide and shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of twenty-five (25) feet.

DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

e. For waste ACM transported off the facility site, the waste generator shall provide a waste shipment record to include the following information:

(i) The name, address, and telephone number of the waste generator;

(ii) The name, address, and telephone number of the cabinet;

(iii) The approximate quantity of the waste shipment in cubic feet or cubic yards;

(iv) The name and address of the disposal site;

(v) The name and telephone number of the disposal site operator;

(vi) The date transported;

(vii) The name, address, and telephone number of the transporter; and

(viii) A certification that the contents of the waste shipment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for highway transport according to applicable law and regulations.

f. The waste transporter shall provide a copy of the waste shipment record to the owner or operator of the disposal site when the waste is delivered. The owner or operator shall sign the waste shipment record and return it to the waste generator via the transporter, the U.S. Postal Service, commercial delivery service, or hand delivery. If the waste generator does not receive a copy of the waste shipment record, signed by the owner or operator of the disposal site, within thirty-five (35) calendar days of the date the waste was accepted by the initial transporter, he shall contact the transporter or the disposal site to determine the status of the shipment.

g. The waste generator shall report to the cabinet in writing if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received within forty-five (45) calendar days of the date the waste was accepted by the initial transporter. The report shall include a copy of the waste shipment record for which a confirmation of delivery was not received and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

h. The waste generator shall retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least thirty (30) years.

i. All records required under this paragraph shall, upon request, be made available to the cabinet for inspection.

15. When all ACM has been removed and prepared for disposal, the containment area shall be thoroughly cleaned. A lockdown agent shall be applied to surfaces stripped of ACM which are difficult to clean, and which could contain residual fibers. All polyethylene sheeting on floors, ceilings, and permanent walls, except sheeting used for barriers or critical barriers, shall be removed and disposed as waste ACM according to paragraph (c)14 of this subsection. Barriers and critical barriers shall not be dismantled, nor covered objects uncovered, until acceptable final clearance air monitoring results are obtained. All exposed surfaces shall be HEPA vacuumed, wet wiped, and dried until no visible residue is observed in the work area. After wet wiping or applying lockdown, whichever is done last, at least twenty-four (24) hours shall be allowed for drying before final clearance air samples are taken, unless the air monitor who performs the final clearance sampling or a cabinet inspector has observed and verified that sufficient drying has occurred.

16.a. Clearance air monitoring shall be performed by a person or entity who is not an employee or subsidiary of the owner or operator, or contractor, and whose business is not partly owned or financed by the owner or operator, or contractor. A person shall not perform air monitoring, or cause or allow air monitoring to be performed, which violates a provision of this subparagraph.

b. Persons who perform air monitoring shall have met the requirements specified in subsection (5)(g)5 of this section, and evidence showing these requirements have been met shall be requested by and provided to the owner or operator, or contractor, when the person is selected or retained and shall, upon request, be made available by the owner or operator, or contractor, for inspection by the cabinet.

c. The method used for final clearance monitoring shall either be

PCM, as defined in Section 1(53) of this administrative regulation, or TEM, as defined in Section 1(68) of this administrative regulation.

d. Analysis of air samples shall be done by a person who meets the requirements in subsection (5)(g)5 of this section, and whose laboratory meets the requirements in subsection (5)(g)6 of this section. Evidence showing these requirements have been met shall be requested by and presented to the owner or operator, or contractor, and shall, upon request, be made available by the owner or operator, or contractor, for inspection by the cabinet.

e. At least five (5) samples of air per work area or one (1) sample per room, whichever is greater, shall be obtained. A sample volume sufficient to achieve analytical sensitivity equal to or below one (1) fiber per 100 cubic centimeters of sampled air shall be used. A leaf blower or similar device shall be used just prior to sampling to dislodge all ACM which may have settled in the containment area. Barriers and critical barriers shall not be dismantled nor covered items uncovered until fiber concentrations of less than or equal to one (1) fiber per 100 cubic centimeters of all sampled air have been documented. If greater concentrations are obtained, the work area shall be wet-wiped, dried, and sampled again using the above procedures until the final clearance standard is obtained.

f. Copies of the results of final clearance sampling and other required air monitoring shall be provided to the owner or operator, or contractor, and shall, upon request, be made available by the owner or operator, or contractor, for inspection by the cabinet.

17. After acceptable final clearance results are obtained, all remaining polyethylene sheeting used to contain asbestos emissions and all contaminated disposable clothing and equipment, including the five micron (5μ) water filters, shall be disposed as waste ACM as prescribed in paragraph (c)14 of this subsection.

(d) When performing a NESHAP demolition, the following procedures may be used in lieu of the procedures for NESHAP renovations contained in paragraph (c) of this subsection:

1. A decontamination system shall be set up which consists of a clean room, shower room, and equipment room, separated from each other and from the work area by airlocks. Workers leaving the work area shall progress through an airlock to the equipment room, through a second airlock to the shower room, and through a third airlock to the clean room before exiting to the outside. This system may be used for waste-loadout if each waste parcel is small enough so that no two (2) airlocks will be opened at the same time. If a waste-loadout system is to be used, it shall include a room for washing bags and loading them into containers for disposal, and shall be separated from the work area and from the outside by airlocks with sufficient space between them to accommodate the largest waste parcel. Water used to decontaminate personnel, equipment, or waste parcels shall be treated as waste ACM, or filtered through a five micron (5μ) filter before discharging into a sanitary sewer.

2. Openings in the work area, such as windows, doorways, elevator openings, air ducts and grilles, skylights, and openings created by the construction of barriers, shall be sealed with polyethylene sheeting and waterproof tape to form critical barriers. Materials to be removed shall not be covered or sealed over. Spray polyethylene may be used in lieu of sheeting for those applications that are difficult to seal with sheeting.

3. If the demolition involves a portion of a building or structure, all HVAC equipment opening into or passing through the work area but servicing areas of the building which will not be demolished shall be shut down, locked out, sealed thoroughly with polyethylene sheeting and waterproof tape, and tagged to advise personnel not to activate the equipment.

4. Negative pressure ventilation units with HEPA filtration shall be installed in the work area and operated continuously from the time the work area is sealed off and removal begins until acceptable final clearance air monitoring results are obtained. The number of units shall be sufficient to maintain negative pressure throughout the work and decontamination areas and to provide at least one (1) workplace air change every fifteen (15) minutes. Other negative-pressure air systems that are equivalent in controlling asbestos emissions may be used with prior approval of the cabinet.

5. Warning signs shall be displayed at all approaches to the containment area. Signs shall be twenty (20) inches high by fourteen (14) inches wide and shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of twenty-five (25) feet.

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING
ARE REQUIRED IN THIS AREA

6.a. When removing or stripping friable ACM from a facility or facility component, the material shall be adequately wet prior to and during removal and carefully lowered to the ground to minimize disturbance and release of asbestos fibers. If the material being removed contains amphiboles, it shall be adequately wet using a mixture of water, surfactant, and an encapsulant. If the removal takes place more than fifty (50) feet above the ground or containerization level, the ACM shall be transported to the ground via leak-tight chutes. Mechanical man-lifts may be used in lieu of leak-tight chutes for lowering transite or similar materials that are normally nonfriable. Friable materials that are removed shall be kept adequately wet until collected and bagged for disposal.

b. Facility components that are removed intact or in sections shall be adequately wet immediately before and during the cutting or disjoining operation and shall be carefully lowered to the ground to minimize disturbance and release of asbestos fibers. Removed components shall be kept adequately wet until bagged or wrapped for disposal.

c. Facility components may be removed, transported, stored, disposed, or reused without stripping if the ACM is not damaged or disturbed, and if the component is encased in leak-tight wrapping and properly labeled when being transported, stored, or disposed. When facility components are removed in this manner and no other ACM is being removed, neither negative pressure nor personnel decontamination is required.

7. Removed materials shall be collected, prepared, transported, and disposed according to the provisions for NESHAP renovations prescribed in paragraph (c)14 of this subsection. ACM or contaminated debris which remains after the demolition, pursuant to paragraph (a) of this subsection, and which is not feasible to wrap or containerize, may be transported in bulk with prior approval of the cabinet. If the cabinet approves, the waste shall be adequately wet and transported in lined dumpsters or roll-off boxes. The liner shall be wrapped and sealed around the waste after the dumpster or roll-off box is filled, and shall be disposed along with the waste.

8. When all ACM has been removed and prepared for disposal, the work and decontamination areas shall be thoroughly cleaned. A lockdown agent shall be applied to surfaces stripped of ACM which are difficult to clean, and which could contain residual fibers. Barriers and critical barriers shall not be dismantled nor covered items uncovered until acceptable final clearance air monitoring results are obtained. Exposed surfaces shall be HEPA vacuumed, wet-wiped, and dried until no visible residue is observed in the work area. After wet-wiping or applying lockdown, whichever is done last, at least twenty-four (24) hours shall be allowed for drying before final clearance air samples are taken, unless the air monitor who performs the final clearance sampling or a cabinet inspector has observed and verified that sufficient drying has occurred.

9. Clearance air monitoring shall be performed in accordance with the provisions for NESHAP renovations prescribed in paragraph (c)16 of this subsection.

10. After acceptable final clearance results are obtained, all remaining polyethylene sheeting used to contain asbestos emissions and all contaminated disposable clothing and equipment, including the five micron (5μ) water filters, shall be disposed as waste ACM as prescribed in paragraph (c)14.of this subsection.

(e) When performing a non-NESHAP renovation, or a demolition involving less than the threshold amount, the following reasonable precautions may be used in lieu of the procedures for performing a NESHAP renovation prescribed in paragraph (c) of this subsection, or a NESHAP demolition prescribed in paragraph (d) of this subsection:

1. Critical barriers shall be installed in the work area. Additional barriers shall be installed, if necessary, to prevent the release of asbestos emissions outside the containment area.

2. ACM and components containing ACM shall be kept adequately wet throughout the removal process until bagged or wrapped for disposal.

3. When all ACM has been removed, the work area shall be wet-wiped and HEPA-vacuumed until no visible residue remains. For renovations, a lockdown agent shall be applied to surfaces stripped of ACM which are difficult to clean, and which could contain residual fibers.

4. Waste ACM, polyethylene sheeting, and other contaminated materials shall be collected, prepared, transported, and disposed according to the provisions for NESHAP renovations prescribed in paragraph (c)14a, b, and c of this subsection. ACM or contaminated debris which remains after a demolition, pursuant to paragraph (a) of this subsection, and which is not feasible to wrap or containerize, may be transported in bulk with prior approval of the cabinet.

(f) A glove bag may be used for stripping pipe elbows or other small components in lieu of the work-practice requirements for full or partial containments prescribed in paragraphs (c)1 through (c)10 and 15 through 17 of this subsection, paragraphs (d)1 through 4 and 8 through 10 of this subsection, or paragraph (e)1 of this subsection. The glove bag shall remain sealed throughout the stripping or removal operation and, if negative pressure is to be used, a HEPA-filtered air intake shall be installed to prevent collapse. Warning signs, as prescribed in paragraph (c)11 of this subsection, shall be posted at all approaches to the work area during glove bag operations. Abated surfaces shall be wet-wiped after removal until no visible residue remains, and a lockdown agent shall be applied to surfaces stripped of ACM which are difficult to clean, and which could contain residual fibers.

(g) Removal of nonfriable materials.

1. Removal of asbestos-containing materials that are nonfriable shall be subject to the notification requirements in subsection (2) of this section and the disposal requirements in paragraph (c)14a, b, and c of this subsection, but shall not be subject to the work practices or other controls contained in paragraphs (a) through (f) of this subsection. This includes materials such as packings, gaskets, resilient floor coverings, mastics, roofing materials, and transite or other cementitious ACM which are not in poor condition, and which will not become friable during the removal process due to sanding, grinding, crumbling, or abrading. For transite and other forms of cementitious ACM, this also includes materials which will not be broken during the removal. The following precautions and work practices shall be followed when removing these materials:

a. Adequate wetting shall be maintained prior to and during removal of nonfriable packings and gaskets**, except that wetting shall not be required during removal of fully enclosed packings or gaskets, such as spiral wound gaskets, if the asbestos filler material remains firmly enclosed during the removal**.

b. When removing nonfriable resilient floor coverings the "Recommended Work Practices for the Removal of Resilient Floor Coverings" published by the Resilient Floor Covering Institute (RFCI Work Practices) may be used in lieu of the controls prescribed in paragraphs (a) through (f) of this subsection and subparagraph 2a of this paragraph. If the RFCI Work Practices are used in lieu of the prescribed controls, the contractor shall provide a supervisor who meets the training requirements prescribed in subsection (5)(g)4 of this section. This supervisor shall be present at the work area throughout the removal, and evidence of this training shall be requested by the owner or operator and shall, upon request, be provided by the owner or operator, or the contractor, to the cabinet for inspection. The RFCI Work Practices are incorporated by reference in Section 14(5) of this administrative regulation.

c. For demolitions where the mastic used to secure the floor covering is the only suspect or confirmed ACM, and if the mastic is covered with flooring and is not in poor condition, the facility may be demolished, but not burned, without removing the mastic, and all debris may be disposed as nonasbestos waste in a construction/demolition landfill.

d. When removing nonfriable asphaltic roofing products that contain asbestos, wetting shall be required unless it poses a safety hazard. If a rotating saw blade or roof cutter is used, a protective shroud shall enclose the cutter blade, and the cut line shall be adequately wet prior to and during removal. Built-up roofing that contains asbestos felt may be transported for disposal in lined dumpsters or roll-off boxes if the liner is wrapped and sealed around the waste after the dumpster or roll-off box is filled, and the liner is disposed along with the waste.

e. Removal of nonfriable transite and other cementitious ACM shall be considered a nonfriable removal only if it can be accomplished with no breakage. If no breakage can be assured, then no controls are required except as provided in paragraph (g)1 of this subsection.

2. Removal of materials that are normally nonfriable but which have or will become friable, as defined in Section 1(28) of this administrative regulation, shall comply with all the provisions prescribed in paragraphs (a) through (f) of this subsection for friable removals except that:

a. For removal of friable floor coverings, a limited containment with critical barriers and polyethylene splash guards around the walls extending three (3) feet up from the floor may be used in lieu of the polyethylene barriers and the wall and ceiling sheeting required for full containment.

b. For removal of friable asphaltic roofing materials, a containment shall not be required. Wetting the entire surface shall be required unless it presents a safety hazard. If a rotating saw blade or roof cutter is used, a protective shroud shall enclose the cutter blade, and the cut line shall be adequately wet prior to and during removal. Built-up roofing that contains asbestos felt may be transported for disposal in lined dumpsters or roll-off boxes if the liner is wrapped and sealed around the waste after the dumpster or roll-off box is filled, and the liner is disposed along with the waste.

c. For removal of friable transite and other cementitious ACM outside buildings, a containment shall not be required, but the following precautions shall be taken to minimize breakage:

(i) Bolts, screws, or other fasteners shall be carefully removed and overlapping sheets or slabs of ACM shall be removed in reverse order of installation.

(ii) Appropriate tools shall be used, such as prying tools that are thin enough to fit under the slabs and wide enough to distribute the pulling force over a wide area.

(iii) Two (2) or more layers of polyethylene sheeting shall be spread on the ground to collect any pieces which fall.

(iv) All exposed surfaces shall be kept adequately wet with a mixture of water, surfactant, and encapsulant throughout removal, and all break points shall be adequately wet immediately after breaking.

(v) Removed ACM shall be collected and prepared for disposal as soon as possible. All broken pieces shall be kept adequately wet until collected and bagged for disposal. Small pieces shall be double-bagged and large pieces shall be double-wrapped or double-bagged for disposal.

(h) The cabinet may, on a case-by-case basis, approve the use of alternative work practices if they are as effective in preventing asbestos emissions as those prescribed in paragraphs (c) through (g) of this subsection. A contractor desiring to use an alternative work practice shall submit a proposal to the cabinet, in writing, prior to the beginning of the project. The proposal shall provide a description of the alternative work practice, a list of the prescribed work practices which the alternative will replace, an explanation of why the prescribed work practices are not feasible and how the alternative will provide equivalent control, and a statement certifying that the proposed alternative will not be in conflict with any applicable federal, state, or local law. The contractor shall not proceed with the proposed alternative until the cabinet has reviewed and approved its use.

(4) Recordkeeping requirements. Owners or operators to whom this subsection applies shall maintain records of all asbestos abatement projects performed in their facility and shall make these records available to the cabinet upon request. Contractors to whom this subsection applies shall maintain records of all asbestos abatement projects which they perform and shall make these records available to the cabinet upon request. Records shall be maintained by the owner or operator and the contractor for a period of thirty (30) years from the date of project completion for friable removals, and six (6) years from the date of completion for nonfriable removals, and shall include the following information for each project:

(a) Copies of original notification and all updates;

(b) For owners or operators, survey documentation and results of all bulk sampling;

(c) For owners or operators, name and address of contractor and responsible supervisor;

(d) For contractors, name and address of owner or operator and facility contact person, and name of responsible supervisor;

(e) Disposal receipts showing amounts of ACM disposed and name and address of disposal site; and

(f) Results of all air sampling conducted during the project.

(5) Certification and training requirements.

(a) Prohibition. Contractors subject to this subsection shall not perform NESHAP work unless a certificate has been issued to the contractor by the cabinet and is currently in force. This prohibition shall be waived only for the demonstration of compliance required in paragraph (b)6 of this subsection.

(b) Application for initial certification.

1. Contractors shall not be considered for certification unless the training requirements prescribed in paragraphs (g)1 through (g)3 of this subsection have been completed prior to filing the application.

2. Applications shall be made on Form DEP-7034, Application For Entity Certification, which has been incorporated by reference in Section 14(1)(a) of this administrative regulation, and shall include all of the information requested on the form.

3. Applications shall be signed by the contractor, and shall constitute personal affirmation that the statements made in the application are true and complete.

4. A filing fee, as specified in paragraph (e) of this subsection, shall accompany the application.

5. Within thirty (30) calendar days after receiving the application, the cabinet shall advise the applicant if the application is complete and, if not, what additional information is needed. Failure to supply information required by the cabinet shall result in denial of the application.

6. As soon as the application is deemed complete by the cabinet, the applicant shall be notified and asked to establish a date when the cabinet can witness an asbestos abatement project, either simulated or actual, performed by the contractor to demonstrate compliance with this administrative regulation. This demonstration project shall be performed no later than sixty (60) calendar days after the application is deemed complete, and all persons whose names are to be listed on the contractor's initial certificate shall be in attendance.

7. The application shall be approved or denied within thirty (30) calendar days after the demonstration project. In evaluating the application the cabinet shall consider the information contained in the application, the results of the demonstration project, the applicant's performance history during any prior term of certification, and other pertinent information available to the cabinet. The application may be denied if the cabinet determines that any provision of this or any applicable administrative regulation has not been met, or that the applicant, or the same entity using a different name, is not likely to meet the requirements of this administrative regulation. The application shall be denied if the cabinet determines that the applicant willfully made a misstatement in the application. The applicant shall be notified in writing of the cabinet's determination and, if the application is denied, the reason for denial.

8. If the application is approved the applicant shall submit the certification fee as specified in paragraph (e) of this subsection. A certificate shall be issued by the cabinet within thirty (30) calendar days of the demonstration project or receipt of the fee, whichever is later.

(c) Duration of a certificate. A certificate shall be valid for one (1) year from the date of issuance. Modifying a certificate shall have no effect on the date of expiration.

(d) Application for renewed or modified certificate. Applications for a renewed or modified certificate shall be subject to the same requirements as applications for an original certificate specified in paragraph (b) of this subsection except as follows:

1. Applications for renewal shall be submitted not less than thirty (30) calendar days nor more than ninety (90) calendar days prior to the date of expiration. Applications for modification may be submitted any time a certificate is in force.

2. The application shall be approved or denied within thirty (30) calendar days of receipt of a complete application. If the previous certificate has not expired for longer than one (1) year, then a demonstration project shall not be required. The cabinet shall consider the information contained in the application, other pertinent information that is available, and the applicant's performance history during any prior term of certification in evaluating the application. The application may be denied if the cabinet determines that any provision of this or any applicable administrative regulation has not been met, or that the applicant, or the same entity using a different name, is not likely to meet the requirements of this administrative regulation. The application shall be denied if the cabinet determines that the applicant willfully made a misstatement in the application. The applicant shall be notified in writing of the determination and, if the application is denied, the reason for denial.

3. If an application for a modified certificate is approved by the cabinet, a modified certificate shall be issued within thirty (30) calendar days of approval. If an application for a renewed certificate is approved by the cabinet, the applicant shall submit the fee for renewal of certification as specified in paragraph (e) of this subsection. Within thirty (30) calendar days of receiving this fee or approving the application, whichever is later, the renewed certificate shall be issued.

(e) Fees. All fees shall be submitted to the cabinet as a check or money order, payable to the Kentucky State Treasurer. Fees shall not be charged to a federal, state, or local government agency if their employees perform asbestos abatement projects only in publicly owned facilities, as defined in Section 1(57) of this administrative regulation.

1. Filing fee. A filing fee shall be submitted with each application for certification, renewal, or modification. This fee shall not be refunded if the application is denied or withdrawn, or if the demonstration project is not performed within sixty (60) days after the application is deemed complete. The filing fee shall be applied toward the certification or renewal fee if the application is approved and the certificate is issued.

a. The filing fee for certification shall be $100.

b. The filing fee for renewal or modification of certification shall be

fifty (50) dollars.

2. Certification and renewal fees. A fee shall be submitted to the cabinet prior to the issuance of a certificate or renewed certificate. If this fee is submitted with the filing fee, it shall be refunded if the application is denied or withdrawn, or if the demonstration project is not performed within sixty (60) days after the application is deemed complete.

a. The certification fee shall be $400 plus the $100 filing fee.

b. The fee for renewal of certification shall be $200 plus the fifty (50) filing fee.

c. There shall be no fee for modifying a certificate, except the fifty (50) dollar filing fee.

(f) Revoking a certificate. The cabinet may revoke any certificate issued under the provisions of this subsection if the contractor:

1. Willfully makes a misstatement or knowingly omits information in the certification application, renewal or modification application, or in any amendment to these applications;

2. Fails to comply with the terms or conditions of the certificate; or

3. Fails to comply with the requirements of this or any applicable administrative regulation.

(g) Training requirements.

1. Each contractor shall provide at least one (1) supervisory person pursuant to subsection (3)(b) of this section. This person shall have attended an initial training course and an annual retraining course for the supervision of AHERA projects currently approved by the cabinet, or by the U.S. EPA, or by a state whose AHERA accreditation programs have U.S. EPA approval in the supervisor discipline.

2. Supervisory persons shall be required to complete a written examination approved by the cabinet, or by the U.S. EPA, or by a state whose AHERA accreditation programs have EPA approval in the supervisor discipline, at the completion of the initial and retraining courses prescribed in subparagraph 1 of this paragraph, and achieve a score of at least seventy (70) percent on the final examinations.

3. Supervisory persons shall be listed on the contractor's certificate issued by the cabinet and shall attend an orientation program sponsored by the cabinet concerning the requirements, procedures, and standards set forth in this administrative regulation. If a contractor wishes to add or delete names on the contractor's certificate prior to its expiration and subsequent renewal, he shall notify the cabinet and submit an application to modify the certificate.

4. If persons who supervise the removal of nonfriable resilient floor coverings, as prescribed in subsection (3)(g)1b of this section, are not trained and listed on a contractor's certificate as prescribed in paragraphs (g)1 through 3 of this subsection, then they shall have attended the Resilient Floor Covering Institute's eight (8) hour training course entitled "Removal of Resilient Floor Coverings" and shall have achieved a score of at least seventy (70) percent on the final examination. **For courses that offer only a pass/fail grade, the student shall have achieved a passing grade.** Information on this course may be obtained by contacting the Resilient Floor Covering Institute, 966 Hungeford Drive, Suite 12B, Rockville, MD 20850, Telephone (301) 340-8580.

5. Persons who perform air monitoring or who analyze air samples as prescribed in subsection (3)(c)16 and (d)9. of this section shall have attended the National Institute of Occupational Safety and Health (NIOSH) 582 training course**, or an equivalent course with approval of the cabinet,** and achieved a score of at least seventy (70) percent on the final examination. **For courses that offer only a pass/fail grade, the student shall have achieved a passing grade.** Information on this course may be obtained by contacting the National Institute of Occupational Safety and Health, Division of Training and Manpower Development, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone (513) 523-8225.

6.a. Laboratories used to analyze air samples by PCM shall have successfully participated in the most current round of NIOSH's Proficiency Analytical Testing (PAT) program. Information about this program may be obtained by contacting the National Institute of Occupational Safety and Health, Division of Physical Science and Engineering, Proficiency Analytical Testing (PAT) Program, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone (513) 841-4283.

b. Laboratories used to analyze air samples by TEM, or to analyze bulk samples of suspect ACM by PLM, shall be accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). Information about this program may be obtained by contacting the National Institute of Standards and Technology (NIST), Laboratory Accreditation Program, Building 411, Room A162, Gaithersville, Maryland 20899, Telephone (301) 975-4016.

(h) Training course requirements.

1. To be approved by the cabinet, the initial training course required in paragraph (g)1 of this subsection shall meet the following requirements:

a. The course shall provide at least forty (40) hours of training on the following topics:

(i) Physical characteristics of asbestos including fiber size, aerodynamic characteristics, and physical appearance;

(ii) Health hazards of asbestos;

(iii) Protective equipment used by persons working with asbestos;

(iv) Medical monitoring procedures and benefits, and employee access to medical monitoring records;

(v) Air monitoring procedures;

(vi) State-of-the-art work practices for asbestos abatement activities;

(vii) Safety hazards that may be encountered during abatement activities and how to deal with them;

(viii) Relevant federal, state, and local regulatory and recordkeeping requirements;

(ix) Contract specifications and bidding procedures, liability insurance and bonding, and legal considerations related to asbestos abatement;

(x) Establishing respiratory protection and medical surveillance programs; and

(xi) Supervisory techniques.

b. At least fourteen (14) hours of the course shall consist of hands-on training covering the topics contained in subclauses (iii), (vi), (vii), and (x) of this clause.

c. A final examination shall be given at the conclusion of the course and shall contain at least 100 multiple-choice questions covering each of the course topics.

2. To be approved by the cabinet, the annual retraining course required in paragraph (g)1 of this subsection shall provide at least eight (8) hours of training to review the initial training topics in paragraph (h)1 of this subsection, including updated information on state-of-the-art procedures and equipment, and shall review regulatory changes and interpretations. An examination shall be given at the conclusion of the retraining course and shall contain at least fifty (50) multiple-choice questions covering all of the course topics.

3. The initial and refresher courses entitled "Supervision of Asbestos Abatement Projects" as developed by the Research Institute at Georgia Institute of Technology and sponsored and approved by U.S. EPA shall satisfy the requirements for initial training and retraining courses, as specified in paragraphs (h)1 and 2 of this subsection.

4. Alternative training courses may be approved if the cabinet determines they are equivalent to the courses specified above. A prospective training course sponsor seeking approval shall submit the following information to the cabinet:

a. Name, address, phone number, and background of course sponsor;

b. Course location and fees;

c. Copies or description of all course handouts, including manuals;

d. Detailed description of course content and the amount of time allotted to each major topic;

e. Description of teaching methods to be utilized and a list of all audio-visual materials;

f. List of all personnel involved in course preparation and presentation, and a brief description of the background, special training, and qualifications of each;

g. Description of student evaluation and course evaluation methods used;

h. A copy of the written examination to be administered at the conclusion of the course;

i. A statement assuring compliance with U.S. EPA recordkeeping requirements for training providers; and

j. A numbered, sample diploma containing the training provider's name, address, and phone number, and including the graduate's name, course name, course dates, examination date, expiration date, and a statement that the graduate passed the examination with a score of seventy (70) percent or higher.

5. Prospective course sponsors shall permit the cabinet to perform on-site audits of initial and refresher supervisory training required under this paragraph. These audits may be made without forewarning, and shall be to verify information submitted for approval. Course sponsors shall accommodate these audits without charge to the cabinet.

6. The cabinet shall advise the prospective course sponsor of its determination, in writing, within ninety (90) calendar days of receipt of all information identified in paragraph (h)4 of this subsection and, if approval is denied, its reasons for denial.

7. Approved course sponsors shall permit the cabinet to perform on-site training audits of approved courses. These audits may be made without forewarning and shall be to verify the continued integrity of the course content and instruction. Course sponsors shall accommodate these audits without charge to the cabinet.

8. If the course content, instructors, methods of instruction, or other material or information submitted for approval as prescribed in paragraph (h)4 of this subsection and upon which subsequent approval was given should significantly change, the course sponsor shall submit to the cabinet for review copies or descriptions of all information or material that has changed.

9. Approvals issued under this subsection shall remain in effect as long as the cabinet is satisfied that the course continues to meet the necessary requirements. The cabinet may decide to withdraw approval of a course based on its review of information submitted under paragraph (h)8 of this subsection, or following a course audit performed under paragraph (h)7 of this subsection, or upon receipt of other evidence that the approved course no longer meets the requirements of this subsection, including evidence of fraud or misrepresentation on the part of the course sponsor. Should the cabinet decide to withdraw its approval of a course, the course sponsor shall be notified in writing of the reason for withdrawal within thirty (30) calendar days of the cabinet's decision.

Section 7. Standard for Sites that Convert Waste ACM into Nonasbestos Material. Owners or operators of a proposed facility designed to convert waste ACM into nonasbestos material shall comply with the following:

(1) Obtain prior written approval to construct and operate the facility. The following information shall be submitted to the **U.S. EPA with a copy to the cabinet.** [~~cabinet and,~~] If approved by **the** U.S. EPA, **it** shall be reviewed for approval by the cabinet:

(a) An application to construct pursuant to 401 KAR 50:035, and a description of:

1. Waste feed handling and temporary storage;

2. Process operating conditions;

3. Handling and temporary storage of the end product; and

4. Protocol to be followed when analyzing output materials using TEM.

(b) Performance test protocol, including provisions for obtaining information required under subsection (2) of this section. The cabinet may require that a demonstration of the process be performed prior to approval of the application to construct.

(2) Conduct a startup performance test. Test results shall include:

(a) A detailed description of the types and quantities of nonasbestos material and waste ACM to be processed. Test feed shall include the full range of materials that will be encountered in actual operation of the process.

(b) Results of analyses, using PLM, showing asbestos content of the wastes processed.

(c) Results of analyses, using TEM, showing output materials are free of asbestos. Samples for analysis shall be collected as eight (8) hour composite samples (one (1) seven (7) ounce sample per hour), beginning with the initial introduction of waste ACM and continuing until the end of the performance test.

(d) A description of operating parameters, such as temperature and residence time, defining the full range over which the process is expected to operate to produce nonasbestos materials. Limits shall be specified for each operating parameter within which the process will produce nonasbestos materials.

(e) The length of the test.

(3) Perform the following functions during the initial ninety (90) days of operation:

(a) Continuously monitor and log the operating parameters identified during start-up performance tests that are intended to ensure the production of nonasbestos output material.

(b) During start-up performance tests, monitor input materials to ensure that they are consistent with the test feed materials described in subsection (2)(a) of this section.

(c) Collect and analyze samples, taken as ten (10) day composite samples (one (1) seven (7) ounce sample collected every eight (8) hours of operation) of all output material for the presence of asbestos. Composite samples may be for fewer than ten (10) days. TEM shall be used to analyze the output material for the presence of asbestos. During the initial ninety (90) day period, all output materials shall be stored on site until analysis shows the material to be asbestos-free, or they shall be disposed as waste ACM according to Section 9 of this administrative regulation.

(4) Perform the following functions after the initial ninety (90) days of operation:

(a) Continuously monitor and record the operating parameters identified during start-up performance testing and subsequent performance testing. Output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos output materials shall be:

1. Disposed as waste ACM according to Section 9 of this administrative regulation;

2. Recycled as waste feed during process operation within the established range of operating conditions; or

3. Stored temporarily on site in a leak-tight container until analyzed for asbestos content. Product material that is not asbestos-free shall be disposed as waste ACM or recycled as waste feed to the process.

(b) Collect and analyze monthly composite samples (one (1) seven (7) ounce sample collected every eight (8) hours of operation) of the output material. TEM shall be used to analyze the output material for the presence of asbestos.

(5) Discharge no visible emissions to the outside air from any part of the operation, or use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air.

(6) Maintain the following records on site for at least two (2) years:

(a) Results of start-up performance testing and all subsequent performance testing, including operating parameters, feed characteristic, and analyses of output materials;

(b) Results of the composite analyses required during the initial ninety (90) days of operation;

(c) Results of the monthly composite analyses;

(d) Results of continuous monitoring and logs of process operating parameters;

(e) Shipments received as required in Section 10 of this administrative regulation; and

(f) If analyses of the output materials were not performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which the output materials were sold or deposited and the date of sale or disposal.

(7) Submit the following reports to the cabinet:

(a) A report for each analysis of product composite samples performed during the initial ninety (90) days of operation; and

(b) A report each quarter of operation to include the following:

1. Results of analyses of product composite samples, by month;

2. A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation;

3. The disposition of any product produced during a period of deviation, showing whether it was recycled, disposed as waste ACM, or stored temporarily on site until analyzed for asbestos content; and

4. Information on disposal activities as required in Section 10 of this administrative regulation.

(8) Nonasbestos output material shall not be subject to this administrative regulation. Output materials in which asbestos is detected or output materials produced when the operating parameters deviated from those established during the start-up performance testing, unless shown by TEM analysis to be asbestos-free, shall be considered waste ACM and shall either be handled and disposed according to Sections 9 and 10 of this administrative regulation, or be reprocessed while all of the established operating parameters are being met.

(9) Owners or operators of facilities subject to this section shall also comply with the reporting requirements in Section 13 of this administrative regulation.

Section 8. Standard for Waste Disposal for Asbestos Mills. Owners or operators of asbestos mills shall comply with the following provisions:

(1) Discharge no visible emissions to the outside air from the transfer of control device asbestos waste to the tailings conveyor; or use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air;

(2) Discharge no visible emissions to the outside air during the collection, processing, packaging, or on-site transporting of any waste ACM, or use one (1) of the disposal methods specified in paragraphs (a), (b), (c) or (d) of this subsection.

(a)1. Adequately mix all waste ACM with a wetting agent recommended by the manufacturer of the agent to effectively wet dust and tailings before depositing the material at a waste disposal site. The owner or operator shall use an agent recommended for the particular dust by the agent manufacturer and shall discharge no visible emissions to the outside air from the wetting operation, or use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air.

2. Wetting may be suspended when the ambient temperature at the waste disposal site is less than minus nine and one-half (-9.5) degrees Centigrade (fifteen (15) degrees Fahrenheit), as determined by an appropriate measurement method with an accuracy of plus or minus one (1) degree Centigrade (plus or minus two (2) Fahrenheit). During periods when wetting operations are suspended, the temperature shall be recorded at least at hourly intervals, and records shall be retained for at least two (2) years.

(b) Prepare the waste ACM as follows:

1. Mix control device asbestos waste to form a slurry; adequately wet other waste ACM;

2. Discharge no visible emissions to the outside air from collections, or use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air;

3. After wetting, seal the waste ACM in leak-tight containers while wet. If the material will not fit into containers without additional breakage, put it into leak-tight wrapping; and

4. Label the containers and wrapped materials using warning labels which display the following legend printed in letters of sufficient size and contrast so as to be legible from a distance of three (3) feet.

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

For waste ACM to be transported off the facility site, label the containers and wrapped materials with the name of the waste generator and the location at which the waste was generated.

(c) Process waste ACM into nonfriable forms as follows:

1. Form all waste ACM into nonfriable pellets or other shapes; and

2. Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified in Section 12 of this administrative regulation to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(d) Use an alternative emission control and waste treatment method that is approved by the **U.S. EPA and the** cabinet. If approved by **the** U.S. EPA, the proposed alternative shall be reviewed for approval by the cabinet. To apply for approval for an alternative method, the owner or operator shall submit a written application to the **U.S. EPA with a copy to the** cabinet demonstrating that the proposed alternative shall:

1. Provide equivalent asbestos emissions control as the required method;

2. Be suitable for the intended application;

3. Not violate other federal, state, or local regulations; and

4. Not result in increased water pollution, land pollution, or occupational hazards.

(3) Deposit all waste ACM at a site operated according to Section 10 of this administrative regulation;

(4) If waste is transported by vehicle to a disposal site:

(a) Vehicles used to transport waste ACM shall be marked with signs during the loading and unloading of waste. Signs shall be twenty (20) inches high by fourteen (14) inches wide and shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of twenty-five (25) feet.

DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

(b) For off-site disposal, a copy of the waste shipment record described in subsection (6)(a) of this section shall be provided to the disposal site owner or operator at the same time as the waste ACM is delivered to the disposal site.

(5) For all waste ACM transported off the facility site:

(a) The waste generator shall maintain waste shipment records to include the following information:

1. The name, address, and telephone number of the waste generator;

2. The name, address, and telephone number of the cabinet;

3. The quantity of the waste ACM transported in cubic meters or cubic yards;

4. The name and telephone number of the disposal site operator;
5. The name and address of the disposal site;
6. The date transported;
7. The name, address, and telephone number of the transporter(s); and
8. A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to all applicable regulations.

(b) The waste transporter shall provide a copy of the waste shipment record to the owner or operator of the disposal site when the waste is delivered. The owner or operator shall sign the waste shipment record and return it to the waste generator via the transporter, the U.S. Postal Service, commercial delivery service, or hand delivery. If the waste generator does not receive a copy of the waste shipment record, signed by the owner or operator of the disposal site, within thirty-five (35) days of the date the waste was accepted by the initial transporter he shall contact the transporter or the disposal site to determine the status of the shipment.

(c) A report shall be made to the cabinet in writing if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within forty-five (45) days of the date the waste was accepted by the initial transporter. The report shall include a copy of the waste shipment record for which a confirmation of delivery was not received, and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(d) The waste generator shall retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least two (2) years.

(6) The waste generator shall make all records required under this section available upon request for inspection by the cabinet.

Section 9. Standard for Waste Disposal for Manufacturing, Fabricating, and Spraying Operations. Owners or operators of a manufacturing, fabricating, or spraying operation subject to Section 4 or 5 of this administrative regulation shall comply with the following provisions:

(1) Discharge no visible emissions to the outside air during collection and processing operations, including incineration, or during the packaging or on-site transporting of any waste ACM, or use one (1) of the emission control and waste treatment methods specified in paragraphs (a), (b), or (c) of this subsection.

(a) Prepare the waste ACM as follows:

1. Mix control device asbestos waste to form a slurry; adequately wet other waste ACM;
2. Discharge no visible emissions to the outside air from collections, or use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air;
3. After wetting, seal the waste ACM in leak-tight containers while wet. If the material will not fit into containers without additional breakage, put it into leak-tight wrapping; and
4. Label the containers and wrapped materials using warning labels which display the following legend printed in letters of sufficient size and contrast so as to be legible from a distance of three (3) feet.

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

For waste ACM to be transported off the facility site, label the containers and wrapped materials with the name of the waste generator and the location at which the waste was generated.

(b) Process waste ACM into nonfriable forms as follows:

1. Form all waste ACM into nonfriable pellets or other shapes; and
2. Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified in Section 12 of this administrative regulation to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(c) Use an alternative emission control and waste treatment method that is approved by the **U.S. EPA and the** cabinet. If approved by **the** U.S. EPA, the proposed alternative shall be reviewed for approval by the cabinet. To apply for approval for an alternative method, the owner or operator shall submit a written application to the **U.S. EPA with a copy to the** cabinet demonstrating that the proposed alternative shall:

1. Provide asbestos emissions control equivalent to the required methods;
2. Be suitable for the intended application;
3. Not violate other federal, state, or local regulations; and
4. Not result in increased water pollution, land pollution, or occupational hazards.

(2) Deposit all waste ACM as soon as is practical at:

(a) A waste disposal site operated according to Section 10 of this administrative regulation; or

(b) A site approved by the cabinet that converts waste ACM into nonasbestos material according to Section 7 of this administrative regulation.

(3) Vehicles used to transport waste ACM shall be marked with signs during the loading and unloading of waste. Signs shall be twenty (20) inches high by fourteen (14) inches wide and shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of twenty-five (25) feet.

DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

(4) For all waste ACM transported off the facility site:

(a) The waste generator shall maintain waste shipment records which include the following:

1. The name, address, and telephone number of the waste generator;
2. The name, address, and telephone number of the cabinet;
3. The approximate quantity of waste ACM in cubic yards or cubic meters;
4. The name and telephone number of the disposal site operator;
5. The name and address of the disposal site;
6. The date transported;
7. The name, address, and telephone number of the transporter(s); and
8. A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to all applicable regulations.

(b) The waste transporter shall provide a copy of the waste shipment record to the owner or operator of the disposal site when the waste is delivered. The owner or operator shall sign the waste shipment record and return it to the waste generator via the transporter, the U.S. Postal Service, commercial delivery service, or hand delivery. If the waste generator does not receive a copy of the waste shipment record, signed by the owner or operator of the disposal site, within thirty-five (35) days of the date the waste was accepted by the initial transporter he shall contact the transporter or the disposal site to determine the status of the shipment.

(c) A report shall be made to the cabinet in writing if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within forty-five (45) days of the date the waste was accepted by the initial transporter. The report shall include a copy of the waste shipment record for which a confirmation of delivery was not received, and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(d) The waste generator shall report in writing to the cabinet if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within forty-five (45) days of the date the waste was accepted by the initial transporter, and shall include in the report the following information:

1. A copy of the waste shipment record for which a confirmation of delivery was not received; and

2. A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(e) The waste generator shall retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least two (2) years.

(5) The waste generator shall make all records required under this section available upon request to the cabinet for inspection.

Section 10. Standard for Active Waste Disposal Sites. Owners or operators of active waste disposal sites that receive deposits of waste ACM from any source shall comply with the following provisions:

(1) Bags, drums, boxes or other containers of waste ACM shall be handled in a manner which prevents the container from rupturing and exposing the contents to the outside air.

(2) Waste ACM shall be covered with at least **six (6) inches** [~~two (2) feet~~] of compacted nonasbestos material, and this cover shall be maintained to prevent exposure and release of asbestos fibers. This cover shall be applied at the end of each operating day or at least one (1) time every twenty-four (24) hours while the site is in operation and deposits of waste ACM are being received.

(3) In lieu of the requirements specified in subsection (2) of this section, an alternative emission control and waste treatment method may be used if approved by the **U.S. EPA and the** cabinet [~~and the U.S. EPA~~]. If approved by **the** U.S. EPA, the proposed alternative shall be reviewed for approval by the cabinet. To apply for approval of an alternative method, the owner or operator shall submit a written application to the **U.S. EPA with a copy to the** cabinet demonstrating that the proposed alternative will:

(a) Provide asbestos emissions control equivalent to the required method;

(b) Be suitable for the intended application;

(c) Not violate other federal, state, or local regulations; and

(d) Not result in increased water or land pollution, or pose occupational or other hazards to human health or the environment.

(4)(a) Provide at least eight (8) hours of training for all workers engaged in the handling and disposal of waste ACM. This training shall include:

1. The health effects associated with exposure to asbestos;

2. Protective steps necessary to prevent undue exposure, including engineering controls and safe work practices to be used in handling and disposal;

3. The purpose, proper use, fitting, and limitations of respirators, protective clothing, and other protective devices; and

4. Federal, state, and local regulations which govern the proper handling and disposal of waste ACM.

(b) The training prescribed in paragraph (a) of this subsection shall be provided within thirty (30) calendar days of initial assignment, and a refresher course of at least four (4) hours duration and covering the same topics shall be provided at least one (1) time each year thereafter for all workers still engaged in the handling and disposal of waste ACM. For existing employees, the initial training shall be provided within six (6) months of the effective date of this regulation.

(c) Records of initial and refresher training provided under this subsection shall be maintained at the facility for a period of at least two (2) years.

(5) For all waste ACM received:

(a) Maintain waste shipment records which include the following information:

1. The name, address, and telephone number of the waste generator;

2. The name, address, and telephone number of the transporter(s);

3. The quantity of the waste ACM received in cubic yards;

4. The date of the receipt; and

5. The receipt of friable waste ACM not sealed in leak-tight bags or containers, or the receipt of friable waste ACM in bags or containers that are improperly enclosed, damaged, or leaking. The owner or operator shall report in writing to the cabinet by the following working day the receipt of this waste, and shall submit a copy of the waste shipment record with the report;

(b) As soon as possible but no later than thirty (30) calendar days after receipt of the waste, send a copy of the signed waste shipment record to the waste generator;

(c) Upon discovering a discrepancy between the quantity generated and the quantity received, notify the waste generator of the discrepancy. The waste generator shall attempt to resolve the discrepancy and, if the discrepancy is not resolved within fifteen (15) days after receipt of notice from the owner or operator, shall provide the cabinet and the owner or operator of the disposal site with a written report describing the discrepancy and his attempts to reconcile it, and shall submit a copy of the waste shipment record with the report.

(d) The owner or operator shall retain a copy of all records and reports required by this subsection for at least two (2) years.

(6) Maintain until closure a map or diagram of the disposal area showing the location, depth and area, and quantity in cubic yards or cubic meters of all waste ACM deposited within the disposal site.

(7) Upon closure, comply with all provisions of Section 11 of this administrative regulation, and submit to the cabinet a copy of the asbestos waste disposal records as prescribed in subsection (6) of this section.

(8) Notify the cabinet in writing at least ten (10) days prior to excavating or disturbing any waste ACM that has been deposited and covered. If the excavation date changes, renotify the cabinet at least ten (10) working days before the old or new date, whichever is sooner. Excavation shall not begin on a date other than the date specified in the most recent notice. The owner or operator shall include the following information in the notice:

(a) Scheduled starting and completion dates;

(b) Reason for disturbing the waste;

(c) Procedures to be used to control emissions while the waste is being excavated, identified, stored, transported, and ultimately disposed. If deemed necessary, the cabinet may require changes in the procedures to be used; and

(d) Location of temporary storage site and final disposal site.

(9) Furnish all records required under this section to the cabinet upon request, and make them available during normal business hours for inspection by the cabinet.

(10) Comply with the reporting requirements in Section 13 of this administrative regulation.

Section 11. Standard for Inactive Waste Disposal Sites. Owners or operators of inactive waste disposal sites that have received deposits of waste ACM from any source shall comply with the following provisions:

(1) Ensure that all waste ACM is covered with at least two (2) feet of compacted nonasbestos-containing material, and maintained to prevent exposure and release of asbestos fibers.

(2) In lieu of the procedure specified in subsection (1) of this section, an alternative emission control and waste treatment method may be used if approved by the **U.S. EPA and the** cabinet [~~and the U.S. EPA~~]. If approved by **the** U.S. EPA, the proposed alternative shall be reviewed for approval by the cabinet. To apply for approval of an alternative method, the owner or operator shall submit a written application to the **U.S. EPA with a copy to the** cabinet demonstrating that the proposed alternative shall:

(a) Provide asbestos emission control equivalent to the required method;

(b) Be suitable for the intended application;

(c) Not violate other federal, state, or local regulations; and

(d) Not result in increased water pollution, land pollution, or occupational hazards.

(3) Notify the cabinet in writing at least ten (10) days prior to excavating or disturbing any waste ACM that has been deposited and covered. If the excavation date changes, renotify the cabinet at least ten (10) working days before the old or new date, whichever is sooner. Excavation shall not begin on a date other than the date specified in the most recent notice. The owner or operator shall include the following information in the notice:

(a) Scheduled starting and completion dates;

(b) Reason for disturbing the waste;

(c) Procedures to be used to control emissions while the waste is being excavated, identified, stored, transported, and ultimately disposed. If deemed necessary, the cabinet may require changes in the procedures to be used; and

(d) Location of any temporary storage site and the final disposal site.

(4) Within sixty (60) days after a site becomes inactive, record a notation on the deed to the facility property and on all other documents that would normally be examined during a title search. The notation shall forever advise potential purchasers that:

(a) The land has been used for the disposal of waste ACM; and

(b) The survey plot and record of the location and quantity of waste ACM disposed have been filed with the cabinet; and

(c) The site is subject to this administrative regulation.

(5) Comply with the reporting requirements in Section 13 of this administrative regulation.

Section 12. Air Cleaning. Owners or operators, or contractors who are required to use or elect to use the air cleaning methods specified in this section shall comply with the following provisions:

(1) Use fabric filter collection devices as follows:

(a) Operate the devices at a pressure drop of no more than 0.995 kilopascal (four (4) inches water gauge) measured across the filter fabric;

(b) Ensure that the air-to-cloth ratio as determined by ASTM Test Method D 737-75, Standard Test Method for Air Permeability of Textile Fabrics, which has been incorporated by reference in Section 14(3) of this administrative regulation, does not exceed thirty (30) ft/min for woven fabrics or thirty-five (35) ft/min for felted fabrics, except that up to forty (40) ft/min for woven and up to forty-five (45) ft/min for felted fabrics is allowed for filtering air from asbestos ore dryers;

(c) Ensure that felted fabric weighs at least fourteen (14) oz/yd^2 and is at least one-sixteenth (1/16) inch thick throughout; and

(d) Avoid the use of synthetic fabrics that contain fill yarn unless the yarn is spun.

(2) In lieu of the requirements specified in subsection (1) of this section, the owner or operator may:

(a) Use a HEPA filter that has at least 99.97 percent efficiency for particles of three-tenths microns (0.3μ) in size; or

(b) If the use of fabric creates a fire or explosion hazard, or the cabinet determines that a fabric filter is not feasible, the cabinet may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (forty (40) inches water gauge pressure); or

(c) If approved by U.S. EPA, the cabinet may authorize the use of alternative filtering equipment if the owner or operator demonstrates to the **U.S. EPA and the** cabinet's satisfaction that it is equivalent to the equipment required above in filtering particulate ACM.

(3) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this section. Bypass devices shall be used only during upset or emergency conditions and then only for the time required to shut down the operation generating the particulate ACM.

(4) Provide for easy inspection for faulty bags on all fabric filter collection devices.

Section 13. Reporting Requirements for New and Existing Sources. (1) Applicability. This section applies to owners or operators of asbestos mills, manufacturing and fabricating operations, active and inactive waste disposal sites, and sites that convert waste ACM into nonasbestos materials.

(2)(a) All sources which have an initial start-up date preceding the effective date of this administrative regulation shall provide the information requested in subsection (3) of this section to the cabinet, postmarked or delivered within ninety (90) days of the effective date of this administrative regulation, unless this information has already been provided to the cabinet.

(b) Sources which have an initial start-up date after the effective date of this administrative regulation shall provide the information requested in subsection (3) of this section to the cabinet, postmarked or delivered within ninety (90) days of the initial start-up date.

(3) Owners or operators of sources subject to this section shall provide the following:

(a) A description of the emission control equipment used for each process;

(b) If a fabric filter device is used to control emissions:

1. The air-to-cloth ratio in feet per minute (ft/min) or meters per minute (m/min) if the fabric filter device uses a woven fabric, and if the fabric is synthetic, whether the fill yarn is spun or not spun; and

2. If the fabric filter device uses a felted fabric, the density in ounces per square yard or grams per square meter, the minimum thickness in millimeters or inches, and the air-to-cloth ratio in feet per minute (ft/min) or meters per minute (m/min);

(c) If a HEPA filter is used to control emissions, the certified efficiency;

(d) For sources subject to Sections 8 and 9 of this administrative regulation:

1. A brief description of each process that generates waste ACM;

2. The average volume of waste ACM disposed, measured in cubic yards per day or cubic meters per day;

3. The emission control methods used in all stages of waste disposal;

4. The type of disposal site or incineration site used for ultimate disposal, the name of the site operator and the name, telephone number, and location of the disposal site; and

5. The methods used to comply with the standard.

(e) For sources subject to Sections 10 and 11 of this administrative regulation:

1. A brief description of the site; and

2. The methods used to comply with the standard.

(4) Owners or operators of sources subject to this section shall submit the information required by 401 KAR 57:005, Section 8, with the information required in paragraph (3) of this section to the cabinet.

Section 14. Materials Incorporated by Reference. (1) The following forms required to be submitted by the regulated entities are hereby incorporated by reference:

(a) Form DEP-7034, Application for Entity Certification.

(b) Form DEP-7036, Ten (10)Notice Form for Prior Notification of Asbestos Abatement Activities.

(c) Form DEP-5030, Monthly Asbestos Removal Report. Copies of these forms may be obtained between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

1. Office of the Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502) 564-3382;

2. Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41105-1507, (606) 325-8569;

3. Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 843-5475;

4. Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

5. Frankfort Regional Office, 127 Building South Annex, Suites 1 and 2, 1049 US 127 South, Frankfort, Kentucky 40601, (502) 564-3358;

6. Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

7. Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304;

8. Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(2) The following documents from the Code of Federal Regulations, effective July 1, 1990, required to be used as guidance by the regulated entities are hereby incorporated by reference:

(a) 40 CFR 763, Appendix A to Subpart F, Section 1, Polarized Light Microscopy.

(b) 40 CFR 763, Appendix A to Subpart E, Interim Transmission Electron Microscopy.

(c) 40 CFR 763.85-87, Subpart E, AHERA Inspections and Reinspections. Copies of these documents are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402. These documents are available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the offices of the Division for Air Quality listed in subsection (1) of this section.

(3) The following test method required to be used as guidance by the regulated entities is hereby incorporated by reference: ASTM Test Method D 737-75, Standard Test Method for Air Permeability of Textile Fabrics, June 30, 1975. Copies of this document are available for sale from ASTM, 1916 Race Street, Philadelphia, PA 19103, (215) 299-5585. This document is available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the offices of the Division for Air Quality listed in subsection (1) of this section.

(4) The following air sampling method required to be used as guidance by the regulated entities is hereby incorporated by reference: National Institute of Occupational Safety and Health (NIOSH) Method for Determination of Asbestos in Air Using Positive Phase Contrast Electron Microscopy, NIOSH Method 7400, Revised 5/15/89. Copies of this document are available for sale from the U.S. Department of Health and Human Services, National Institute for Occupational Safety and Health, Cincinnati, OH. This document is available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the offices of the Division for Air Quality listed in subsection (1) of this section.

(5) The following document required to be used as guidance by the regulated entities is hereby incorporated by reference: Resilient Floor Covering Institute #RFCI-WP-1990, July 1990, Recommended Work Practices for the Removal of Resilient Floor Coverings. Copies of this document are available for sale from the Resilient Floor Covering Institute, 966 Hungerford Drive, Suite 12B, Rockville, MD 20850, (301) 340-8580. This document is available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the offices of the Division for Air Quality listed in subsection (1) of this section.

(6) The following document from the Kentucky Transportation Cabinet, Department of Highways, required to be used as guidance by the regulated entities is hereby incorporated by reference. Standard Specifications for Road and Bridge Construction, Section 804.04, 1991 Edition. This document is available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the offices of the Division for Air Quality listed in subsection (1) of this section.

Section 15. Regulations Repealed by this Administrative Regulation. 401 KAR 57:011, Asbestos Standards, and 401 KAR 63:042, Requirements for Asbestos Abatement Entities, are hereby repealed.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: August 10, 1993
FILED WITH LRC: August 10, 1993 at 11 a.m.

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

401 KAR 63:036. Stage II, gasoline dispensing facilities.

RELATES TO: KRS Chapter 224, 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7511a(b)(1)(A)

STATUTORY AUTHORITY: KRS 224.10-100, 42 USC 7511a(b)(3), 7521(a)(5), 7624, 7625

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of emissions from gasoline dispensing facilities.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given them in 401 KAR 63:001.

(1) "Average monthly throughput" means the total gallons of gasoline dispensed during the months of operation in the previous twelve (12) months, divided by the number of months of operation during those twelve (12) months.

(2) "Boot" or "bellows" means an accordion-like tubular cover used over a gasoline nozzle to capture the gasoline vapors displaced during vehicle refueling.

(3) "Cabinet" has the meaning given it in KRS 224.01-010.

(4) "CARB" means the California Air Resources Board.

(5) "Classification date" means the date on which this administrative regulation becomes applicable in a county or portion of a county **or November 15, 1993, whichever occurs later**.

(6) "Coaxial hose" means a hose that has the configuration of a hose-within-a-hose which provides separate passages for the flow of gasoline and vapor return.

(7) "Compliance test" means a test conducted or witnessed by the cabinet used to determine compliance with the provisions of all applicable administrative regulations prior to issuance of a permit to operate.

(8) "Dry break" means a poppet valve seal to which a vapor return hose can be attached.

(9) "Equivalent authority" means an authority recognized by the cabinet and by the U.S. EPA as having a program for certification of vapor recovery systems equivalent to that of CARB.

(10) "Executive order" means a document provided by CARB or by an equivalent authority which certifies that a vapor recovery system or system components achieve at least a ninety-five (95)

percent reduction in the VOC emissions during the fueling of a motor vehicle at a facility, and which identifies the performance standards required for the system or system components.

(11) "Facility" or "gasoline dispensing facility" means a site, except a farm not engaged in the sale of gasoline, where gasoline is transferred from a stationary storage tank to a motor vehicle fuel tank which provides fuel to the engine of that motor vehicle.

(12) "Facility representative" means a person employed at a facility with a Stage II vapor recovery system who has been trained to serve at that facility as prescribed in Section 7 of this administrative regulation.

(13) "Functional test" means a test performed during the operation of the vapor recovery system or any of the system components to determine if a component is functioning correctly.

(14) "Gasoline" means any petroleum distillate or petroleum distillate and alcohol blend having a Reid vapor pressure of four (4.0) pounds per square inch (twenty seven and six-tenths (27.6) kilopascals) or greater which is used as a fuel for internal combustion engines.

(15) "Initial monthly throughput" means:

(a) For a facility which commenced construction before the classification date, the total gallons of gasoline dispensed during the months of operation in the twenty-four (24) months preceding the classification date divided by the number of months of operation during those twenty-four (24) months;

(b) For a facility which commenced construction on or after the classification date, an estimate provided by the owner or operator and approved by the cabinet, of the total gallons of gasoline that will be dispensed during the first twelve (12) months of operation divided by twelve (12).

(16) "Initial test" means a test which is performed following completion of construction or modification to determine the capability of the facility to meet the requirements contained in Section 4 of this administrative regulation.

(17) "Leak" means liquid or vapor loss from the gasoline dispensing system or vapor recovery system as determined by visual inspection or functional testing.

(18) "Modification" or "modify" means the replacement, repair, or upgrade of seventy-five (75) percent or more of the facility's Stage II equipment. Determination of the percentage is based on the cost of a total system replacement at the time of modification.

(19) "Month" means calendar month.

(20) "Month of operation" means a month during which a facility is not closed for the purpose of dispensing gasoline for more than four (4) consecutive days.

(21) "Motor vehicle" means a vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways.

(22) "Nonbiogenic VOCs" means the VOC pollution entering the atmosphere deriving from all sources except for naturally occurring emissions from vegetation.

(23) "Owner or operator" means any person who owns, leases, operates, manages, supervises, or controls (directly or indirectly) a gasoline dispensing facility.

(24) "Person" has the meaning given it in KRS 224.01-010.

(25) "Registration date" means the date the owner or operator applies to the cabinet for the exemption provided in Section 3 of this administrative regulation.

(26) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquefied petroleum gases, as determined by ASTM Method D323-90, which is incorporated by reference in 401 KAR 50:015.

(27) "Stage II vapor recovery" means gasoline vapor recovery during the refueling of a motor vehicle from a stationary storage tank at a facility.

(28) "Stage II vapor recovery system" means a vapor recovery system certified by CARB or by an equivalent authority to reduce the emissions of VOCs during the fueling of a motor vehicle at a facility by ninety-five (95) percent or more.

(29) "Storage tank" means a tank at a gasoline dispensing facility which is used for the storage of gasoline.

Section 2. Applicability. This administrative regulation shall apply to each gasoline dispensing facility located in a county or a portion of a county that is:

(1) Designated nonattainment for ozone, for any nonattainment classification except marginal, as defined in 401 KAR 51:010; and

(2) In an air quality control region, as designated in 401 KAR 50:020, in which twenty (20) percent or more of the nonbiogenic VOCs produced in the year 1990 in the nonattainment portion of that region emanated from motor vehicles.

Section 3. Exemptions. (1) A facility commencing construction prior to the classification date and having an initial monthly throughput of **25,000** **[~~10,000~~]** gallons or less shall be exempt from this administrative regulation if the owner or operator:

(a) Completes a registration form as provided in 401 KAR 50:030 and submits it to the cabinet within six (6) months after the classification date;

(b) Annually calculates the facility's average monthly throughput on the anniversary of the classification date;

(c) Notifies the cabinet within thirty (30) days of the anniversary of the classification date if the average monthly throughput exceeds **25,000** **[~~10,000~~]** gallons; and

(d) Maintains for two (2) years records which demonstrate that the facility's average monthly throughput has not exceeded **25,000** **[~~10,000~~]** gallons.

(2) A facility commencing construction on or after the classification date and having an initial monthly throughput of **25,000** **[~~10,000~~]** gallons or less shall be exempt from this administrative regulation if the owner or operator:

(a) Completes a registration form as provided in 401 KAR 50:030 and submits it to the cabinet before the facility begins dispensing gasoline;

(b) Annually calculates the facility's average monthly throughput on the anniversary of the registration date;

(c) Notifies the cabinet within thirty (30) days of the anniversary of the registration date if the average monthly throughput exceeds **25,000** **[~~10,000~~]** gallons; and

(d) Maintains for two (2) years records which demonstrate that the facility's average monthly throughput has not exceeded **25,000** **[~~10,000~~]** gallons.

(3) If the average monthly throughput of an exempted facility exceeds **25,000** **[~~10,000~~]** gallons, the facility shall cease to be exempted and the owner or operator shall comply with this administrative regulation within one (1) year of the anniversary date on which the calculation was made.

Section 4. Permit Requirements. (1) A person shall not construct or modify a Stage II vapor recovery system unless a permit has been issued by the cabinet pursuant to 401 KAR 50:035.

(2) After the applicable compliance date in Section 5 of this administrative regulation, an owner or operator shall not transfer or allow the transfer of gasoline from a stationary storage tank at a gasoline dispensing facility into a motor vehicle fuel tank unless:

(a) A Stage II vapor recovery system is properly constructed and operated during the transfer;

(b) Coaxial hoses are used at the dispensers;

(c) The Stage II vapor recovery system contains no components that would impede the performance of the functional or compliance tests of the system; and

(d) One (1) of the following conditions is met:

1. An initial test as specified in Section 8(1) of this administrative regulation has been passed and the cabinet has not denied the

facility a permit to operate. The authority to operate pursuant to the initial test shall expire sixty (60) days after performance of the initial test, except as provided in Section 8(2)(b) of this administrative regulation.

2. A compliance test as specified in Section 8(2) of this administrative regulation has been passed and a complete application for a permit to operate has been submitted to the cabinet. The application shall be submitted within two (2) weeks of the compliance test date.

Section 5. Compliance Timetable. (1) The owner or operator of a facility to which this administrative regulation applies shall comply with this administrative regulation in the following manner:

(a) Facilities which commenced construction prior to November 15, 1990, with an initial monthly throughput of 100,000 gallons or more shall comply within one (1) year of the classification date.

(b) Facilities which commenced construction prior to November 15, 1990, with an initial monthly throughput between **25,000** [~~10,000~~] and 100,000 gallons shall comply within two (2) years of the classification date.

(c) Facilities which commenced construction on or after November 15, 1990, and on or before the classification date, shall comply within six (6) months of the classification date.

(d) Facilities commencing construction after the classification date shall comply with this administrative regulation before they commence dispensing gasoline.

(2) A facility shall be considered to have met the compliance timetable if the initial test has been passed and submitted to the cabinet by the date prescribed in subsection (1) of this section. This shall not exempt a facility from the requirements of Section 4(2)(d)2 of this administrative regulation.

Section 6. Operating Requirements. The owner or operator shall maintain the Stage II vapor recovery system in accordance with the manufacturer's specifications and the criteria issued in the executive order of CARB or an equivalent authority approving the system. The owner or operator shall comply with the following:

(1) An owner or operator shall not dispense gasoline, or allow a person to dispense gasoline, using Stage II vapor recovery equipment containing a defect listed in this subsection. If a defect described in this subsection is discovered, the owner or operator shall post an "Out of Order" sign on the equipment and shall ensure that the equipment is rendered inoperable. The defects shall include:

(a) The absence or disconnection of any component that is part of the Stage II vapor recovery system;

(b) The use of equipment not in accord with the system certification;

(c) A vapor hose that is crimped or flattened so that:

1. The vapor passage is completely blocked; or

2. The pressure drop through the vapor hose is greater than two (2) times the certification requirements;

(d) A nozzle boot that is torn in one (1) or more of the following ways:

1. A triangular shaped or similar tear more than one-half (1/2) inch on a side; or

2. A hole more than one-half (1/2) inch in diameter; or

3. A slit more than one (1) inch in length;

(e) A faceplate or flexible cone on the boot of a nozzle that is damaged so that the ability to achieve a seal with a fill pipe interface is impaired for at least one-quarter (1/4) of the total circumference of the faceplate or flexible cone;

(f) A malfunctioning nozzle shutoff mechanism;

(g) Vapor return lines, including components such as swivels, antirecirculation valves, and underground piping, that malfunction or are blocked, or are restricted so that the pressure drop through the line is greater than two (2) times the certification requirement;

(h) An inoperative vapor processing unit;

(i) An inoperative vacuum producing device;

(j) An inoperative pressure/vacuum relief valve, vapor check valve, or dry break;

(k) Leaks; or

(l) An equipment defect or changes to a component of the system which the cabinet determines will substantially impair the control efficiency of the system.

(2) A defect in a component of the Stage II vapor recovery system which is not listed in subsection (1) of this section may remain in operation but shall be repaired or replaced within fifteen (15) days after being identified as defective.

(3) If the cabinet identifies a defect specified in subsection (1) of this section, the cabinet shall affix a tag to the defective equipment stating that the equipment is out of order. The tag shall not be removed until the cabinet has been notified that the defect has been corrected, and the tagged equipment has been authorized for use by the cabinet.

(4) The owner or operator shall ensure that safe access to the system components and monitoring equipment is maintained for inspection and compliance determination by the cabinet.

(5) The owner or operator shall ensure that operating instructions for dispensing fuel are displayed on or near each dispenser, in a print type and size that is easily readable, which include at a minimum:

(a) A clear description of how to use the equipment;

(b) A warning not to attempt continued dispensing of fuel after automatic shutoff; and

(c) A telephone number established by the cabinet to report problems experienced with equipment.

Section 7. Training of Facility Employees. (1) The owner or operator shall ensure that he or at least one (1) person at the facility is trained to operate the vapor recovery system, and that the training includes the following topics:

(a) Purposes and effects of the Stage II vapor recovery program;

(b) Operation and functioning of the vapor recovery system at that facility;

(c) Start-up and shut-down procedures, including daily equipment inspections;

(d) How to repair or replace faulty equipment without voiding the equipment warranties;

(e) Procedures for posting and removing "Out of Service" signs;

(f) The executive orders of CARB or of the equivalent authority certifying the system, the range of components certified for use in the system, and the requirements placed on the owner or operator by CARB or the equivalent authority;

(g) Maintenance schedules and requirements for the system and its components;

(h) Equipment warranties; and

(i) Equipment manufacturer and rebuilder contacts, including names, addresses, and phone numbers, for parts and service.

(2) Training may be provided by the vapor recovery equipment manufacturer or distributor, by the person constructing or modifying the Stage II vapor recovery system, or by training manuals provided by the manufacturer, distributor, or the person constructing or modifying the Stage II vapor recovery system. If training is provided by training manuals, they shall be kept at the facility and made available to the cabinet upon request.

(3) The owner or operator shall ensure that the training includes a practical demonstration wherein the facility representative demonstrates an ability to operate and inspect the equipment and to perform a start-up and shut-down of the facility. This demonstration may be performed at another facility with a similar vapor recovery system. The cabinet may require that this demonstration be performed and witnessed by the cabinet as a condition for compliance.

(4) The owner or operator shall obtain a Facility Representative Training Certificate, DEP-6049, which is incorporated by reference in Section 10 of this administrative regulation, from the cabinet for each trained facility representative in his employ. This form shall be:

(a) Signed by the facility representative, certifying that he has been trained as prescribed in subsection (2) of this section;

(b) Signed by the owner or operator, certifying that he has witnessed a practical demonstration performed by the facility representative as prescribed in subsection (3) of this section; and

(c) Notarized.

(5) The owner or operator shall maintain a recorded history of all trained facility representatives which includes the following:

(a) The name of the facility representative and the date he received the training certificate required in subsection (4) of this section; and

(b) If applicable, the date the facility representative left the employ of the owner or operator.

(6) The owner or operator shall not operate the facility for more than **thirty (30)** **[~~ninety (90)~~]** consecutive days without a trained facility representative.

Section 8. Test Methods and Procedures. As provided in Section 4(2)(d) of this administrative regulation and at other times as may be required by the cabinet, the owner or operator shall conduct tests according to this section.

(1) Initial test. Upon completion of the construction or modification of a Stage II vapor recovery system, the owner or operator may conduct an initial test as prescribed in subsection (3) of this section as appropriate for the system. At least two (2) working days before the tests are conducted, the owner or operator shall inform the appropriate regional office of the division of the date the initial test will be conducted.

(2) Compliance test. After the facility has completed construction, the owner or operator shall conduct a compliance test as prescribed in subsection (3) of this section **as appropriate for the system**.

(a) After completion of construction the owner or operator shall contact the appropriate regional office to schedule a compliance test. The owner or operator shall deliver a written confirmation of the test date to the regional office at least five (5) working days before the test date. The confirmation letter shall name the person who will conduct the compliance test.

(b) The compliance test shall be conducted no more than sixty (60) days after construction is completed, except that the date for the compliance test may be delayed up to 180 days after construction is completed, if the cabinet deems the time extension necessary to witness the compliance test. **The facility representative shall be present during the compliance test to make a practical demonstration of start-up and shut-down of the facility.**

(c) If the facility fails the compliance test, the cabinet shall give the owner or operator thirty (30) days notice to correct the deficits, and a new date for the compliance test shall be set.

(3) Initial or compliance tests shall be conducted in accordance with the following test procedures as found in Appendix J of the EPA document, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, Appendices," which is incorporated by reference in Section 10 of this administrative regulation, except that the cabinet may approve other test procedures approved by CARB or an equivalent authority and the U.S. EPA:

(a) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure.

(b) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs. Flow/Liquid Blockage Test Procedure. The cabinet may require that this test be conducted simultaneously on all the nozzles of a dispenser from which gasoline can be dispensed simultaneously.

(c) Bay Area Source Test Procedure ST-37, Liquid Removal Devices. This test applies only to systems using liquid removal devices.

Section 9. Recordkeeping Requirements. (1) The owner or operator shall maintain at the facility the following records:

(a) All applicable permits and licenses required to operate the facility;

(b) The executive orders of CARB or the equivalent authority for the Stage II vapor recovery system;

(c) Names, addresses, and phone numbers of persons who construct or modify the Stage II system;

(d) Current Facility Representative Training Certificate; and

(e) Test results which verify that the vapor recovery system meets or exceeds the requirements of the tests noted in Section 8 of this administrative regulation. The test results shall be dated, and the names, work addresses and phone numbers of the persons conducting the tests shall be listed.

(2) The following records shall be maintained at the facility for two (2) years:

(a) Maintenance records including any repaired or replacement parts and description of the problem;

(b) Compliance records including warnings or notices of violation issued by the cabinet, kept in chronological order;

(c) Gasoline throughput records and a record of months of operation which will allow the average monthly gasoline throughput rate to be continuously determined;

(d) Inspection reports issued by the cabinet, kept in chronological order; and

(e) The facility representative record mandated in Section 7(5) of this administrative regulation.

(3) These records shall be kept current and made available to the cabinet upon request.

Section 10. Reference Material. (1) Incorporation by reference. The following documents are incorporated by reference:

(a) U.S. Environmental Protection Agency, Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, EPA-450/3-91-022b, November 1991, Appendix J, Stage II Installation Test Methods, pages J.1 through J.5-8; available from the U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

(b) DEP 6049, Facility Representative Training Certificate, November 1992.

(2) Copies of the material incorporated by reference in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 11. Penalties. (1) An owner or operator who violates any provision of this administrative regulation shall be subject to the appropriate enforcement action as provided under KRS Chapter 224.

(2) The cabinet may deny, suspend, revoke, or modify a permit to construct or a permit to operate a Stage II vapor recovery system due to repeated malfunctioning of the system or its components, or due to systemic problems in testing the system.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: August 10, 1993
FILED WITH LRC: August 10, 1993 at 11 a.m.

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

405 KAR 10:050. Bond forfeiture.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, [~~350.110,~~] 350.130, 350.131, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.50, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.50, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to insure that satisfactory reclamation is accomplished. This administrative regulation sets forth the procedures and criteria by means of which a bond may be forfeited to the cabinet. This administrative regulation sets forth that certain violations of KRS Chapter 350 and administrative regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This administrative regulation sets forth that a hearing may be requested before [~~such~~] forfeiture can be effected. This administrative regulation [~~also~~] specifies a method to determine the amount of bond forfeiture. This administrative regulation establishes criteria under which unused forfeited bond funds shall be returned to the person from whom they were collected.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the procedures and criteria of this administrative regulation.

(2) The cabinet may withhold forfeiture if the permittee or the surety agrees to a compliance schedule to correct the violations of the permit or bond conditions.

(3) The cabinet shall withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform the [~~said~~] measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) If [~~In the event~~] forfeiture of the bond is required by Section 3 of this regulation, the cabinet shall:

(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 405 KAR 7:092, Section 9; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, the secretary shall enter a final order of forfeiture and the cabinet shall proceed in an action for collection on the bond.

(2) The cabinet may, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 405 KAR 7:092, Section 5.

(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. The [~~Such~~] funds shall be deposited in an appropriate account for the payment of these [~~such~~] costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff the [~~such~~] proceeds under state law.

(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the permittee or operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the permittee or operator all costs of reclamation in excess of the amount forfeited.

(5) Return of unused forfeited bond funds for interim or permanent program permit area overlapped by permanent program permit area. If the cabinet has not completed the reclamation plan on a permit area under 405 KAR Chapter 1 or 3 for which the bond was forfeited on or after July 15, 1988, or if the cabinet has not completed the reclamation plan on a permit area under 405 KAR Chapters 7-24 for which the bond was forfeited, and if the permit area **and any related off-permit disturbances are** [~~is~~] entirely contained within the permit area of a subsequent valid permit under 405 KAR Chapters 7-24 for which the bond is in force, the cabinet shall retain the funds from the forfeited bond until the entire overlapped permit area **and any related off-permit disturbances have** [~~has~~] been disturbed by the overlapping permittee and then shall return the unused funds to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or set off the proceeds under state law.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or Title 405, Chapters 7 through 24 within the time required;

(c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee, surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation; or

(d) The permittee, surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this regulation.

(2) A bond may be forfeited if the cabinet finds that:

(a)1. The permittee has become insolvent; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, Title 405, Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (if [~~where~~] all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired; except that for surety bonds or bonds secured by a letter of credit:

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) If [Where] a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment.

JUDITH A. VILLINES, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 12, 1993 at 4 p.m.

TRANSPORTATION CABINET
(Amended After Hearing)

600 KAR 1:100. Professional engineering and related services procurement.

RELATES TO: KRS 45A.800 through 45A.835, 23 USC, 23 CFR 172, 48 CFR 1, 49 CFR 18

STATUTORY AUTHORITY: KRS **13A.100(1),** 45A.800 through 45A.835, 23 USC, 23 CFR 172, 48 CFR 1, 49 CFR 18

NECESSITY AND FUNCTION: This administrative regulation adopts the procedures to be followed by the Transportation Cabinet when contracting for professional engineering or related services. It has a special emphasis on the procurement of engineering services since KRS Chapter 45A requires the Transportation Cabinet to follow a specific procurement procedure when securing engineering services. For consistency the Transportation Cabinet is also applying those procedures to the procurement of engineering related services.

Section 1. Definitions. (1) "Award" means the presentation of an agreement or contract to a professional.

(2) "Cabinet" means the Kentucky Transportation Cabinet.

(3) "Change order" means as defined in KRS 45A.030(2).

(4) "Competitive negotiation" means as described in KRS 45A.085.

(5) "Contract" means as defined in KRS 45A.030(5).

(6) "Contract modification" means as defined in KRS 45A.030(6).

(7) "Cost per unit of work" means a price based on units when the extent of work cannot be defined but a cost of the work per unit can be determined in advance with reasonable accuracy.

(8) "Cost plus a fixed fee" means a price based on the actual allowable cost of the work plus any preestablished fixed amount for **operating margin** [~~profit~~].

(9) "Direct salary" means the salary of persons directly involved with and chargeable to a specific project, e.g., engineering or draftsman time spent on a project.

(10) "Firm" means a company or individual providing professional engineering or related services **under contract** to the cabinet **as the prime firm** in accordance with KRS Chapter 45A.

(11) "Lump sum" means a fixed price, including cost and **operating margin** [~~profit~~], agreed upon between **a firm** [~~the professional~~] and cabinet for a group of tasks without breakdown of individual values, i.e., a lot price.

(12) "Modification" means a formal revision to the terms of a contract.

(13) "Noncompetitive negotiation" means as described in KRS 45A.095.

(14) "Overhead costs" means the indirect costs, including salaries and other costs, not chargeable to any specific project. These costs normally support the different projects in which a firm is involved, e.g., accounting, general maintenance and repair, building rent, utilities, furniture, etc.

(15) "Proof of necessity" means the justification to employ consulting engineers, architects, appraisers, attorneys, consultants and others.

(16) "Prequalification" means the evaluation of professionals in which the cabinet considers such factors as financial capability, reputation, and management, in order to develop a list of professionals qualified to contract with the cabinet for professional engineering or related services.

(17) "Prequalification category" means a type of project for which professional engineering or related services are contracted.

(18) "Professional engineer" means an individual or firm licensed to practice engineering in the Commonwealth of Kentucky under KRS Chapter 322.

(19) "Professional engineering or related services" means specialized engineering or related professional services performed by individuals or firms of recognized technical competence, education or experience that are involved in the planning, design, construction, maintenance or operation of Kentucky's transportation systems.

(20) "Professional services" means specialized services performed by individuals or firms of recognized technical competence.

(21) "Project" means an undertaking by the Transportation Cabinet as defined in KRS 45A.800(4).

(22) "Project supervisor" means the director of the user division or person designated by the user division director to oversee the performance of a firm to perform contracted services on a project.

(23) "Proposal" means an offer made by a firm to the cabinet as a basis for negotiations for entering into a contract.

(24) "Salary additives" means employer paid fringe benefits including employer portion of FICA, hospitalization, group life insurance, unemployment contributions to the state and other similar benefits.

(25) "Scope of work" means all services and actions required of the firm by the contract.

(26) "Services" means as defined in KRS 45A.030(19).

(27) "Subcontractor" means **a second** [~~an individual or~~] firm contracted to **a prime** [~~another~~] firm for the performance of [~~the~~] work contracted **by the cabinet** to the **prime** [~~other~~] firm [~~by the cabinet~~].

(28) "Termination clause" means a contract clause which allows the cabinet to terminate, at its own discretion, the performance of work and to make settlement of the firm's claims.

(29) "User division" means as defined in KRS 45A.800(6).

(30) "Work unit" means an item on a list of tasks which are required to be accomplished by the firm in order to satisfactorily complete the scope of work.

Section 2. Transportation Cabinet Employee Ethics and Responsibilities. All cabinet personnel engaged in the procurement of engineering or related services shall comply with the following:

(1) Consider the interests of the Commonwealth of Kentucky and the cabinet first when contracting for professional services;

(2) Request and accept assistance from other cabinet and state personnel as required without allowing it to impair the dignity and responsibility of the employee's position;

(3) Seek to obtain the maximum value for each dollar spent for professional services;

(4) Strive for honesty and truth in contracting;

(5) Denounce all forms of bribery or favors;

(6) Invite all firms to submit their qualifications for consideration by the cabinet;

(7) Assist other cabinet personnel in the contracting for professional services as necessary; and

(8) Comply with both the letter and the spirit of **KRS Chapter 11A** [~~the Executive Branch Code of Ethics pertaining to standards of ethical conduct in the Executive Branch, Conflicts of Interest of Public Officers and Employees~~], KRS 45A.340, and to the cabinet's Official Order regarding Conflict of Interest.

Section 3. Federal Regulatory Requirements. (1) If a highway project is funded in part by federal-aid funds, the cabinet shall be regulated by Title 23 of the United States Code and by the Code of Federal Regulations 23 CFR 172 and 49 CFR 18.

(2) The cabinet shall submit justification and receive approval from the FHWA before using the noncompetitive negotiated method of contracting when federal-aid highway funds are used in the contract. A contract **in which** [~~when~~] federal-aid highway funds may be awarded by noncompetitive negotiation shall be limited to the following:

(a) The service is available only from a single source;

(b) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or

(c) After solicitation of a number of sources, competition is determined to be inadequate.

Section 4. Prequalification for Professional Engineering or Related Services. (1) To be considered for a contract to provide engineering related services with the cabinet, a firm shall meet the cabinet's prequalification requirements in the same manner as a firm providing engineering services pursuant to KRS 45A.825.

(2) [~~The cabinet shall establish a consultant prequalification committee to evaluate the statements of qualifications of firms offering professional engineering or related services.~~

~~(3) The members of the consultant prequalification committee shall be the following:~~

~~(a) Director, Division of Specialized Programs, Chairperson;~~

~~(b) Assistant State Highway Engineer for Preconstruction;~~

~~(c) Assistant State Highway Engineer for Construction;~~

~~(d) Director, Division of Design;~~

~~(e) Director, Division of Bridges;~~

~~(f) Director, Division of Materials;~~

~~(g) Director, Division of Planning;~~

~~(h) Director, Division of Environmental Analysis; and~~

~~(i) Associate Assistant State Highway Engineer for Operations.~~

~~(4) Members may be added to or deleted from the consultant prequalification committee by three quarters (3/4) positive vote of the committee.~~

~~(5) The consultant prequalification committee shall consider the statement for prequalification of each firm which wishes to be considered for consultant contracts by the cabinet.~~

~~(6) The consultant prequalification committee shall maintain a current list of prequalified consulting professional engineering and related service firms.~~

~~(7)~~] A firm desiring consideration for prequalification shall complete each qualification questionnaire pertaining to the categories for which prequalification is desired. These forms include the following which are incorporated by reference as a part of this administrative regulation:

(a) Consulting Engineer and Related Services Prequalification Application, TC 40-1, effective May, 1992;

(b) Prequalification Requirements for Geotechnical Drilling Services, TC 64-540, effective May, 1992;

(c) Prequalification Requirements for Geotechnical Engineering Services, TC 64-541, effective May, 1992; and

(d) Prequalification Requirements for Geotechnical Laboratory Services, TC 64-542, effective May, 1992.

(3) [~~(8)~~] The completed prequalification form shall be submitted to the Division of Specialized Programs, 7th Floor, State Office Building, 501 High Street, Frankfort, KY 40622.

(4) [~~(9)~~] Each firm's qualifications for a requested prequalification category shall be reviewed by the offices or divisions within the cabinet with expertise in that requested prequalification category. [~~The recommendations of the offices or divisions shall be reviewed by the consultant prequalification committee.~~]

(5) [~~(10)~~] The criteria for prequalification to be used by the **user divisions and offices** [~~consultant prequalification committee~~] are listed in the appendix to the Consulting Engineer and Related Services Prequalification Application as adopted November 4, 1992 which is incorporated by reference as a part of this administrative regulation.

(6) The head of the user division or office shall notify the Division of Specialized Programs of its evaluation results.

(7) [~~(11)~~](a) The **Division of Specialized Programs** [~~committee chairperson~~] shall notify each firm of all **evaluation results** [~~actions~~] involving that firm.

(b) If a firm is disapproved for any requested prequalification category or service, the firm shall also be notified of the appeals procedure set forth in Section 5 of this administrative regulation.

(8) [~~(12)~~](a) A prequalified firm shall annually submit qualification and performance data on or prior to **its** [~~their~~] anniversary dates of prequalification.

(b) The annual application shall include eleven (11) completed sets of the appropriate qualification forms and eleven (11) copies of the firm's current marketing brochure.

(c) Failure to submit the completed forms in a timely manner shall cause the removal of the firm's prequalification status.

(9) [~~(13)~~] A prequalified firm shall notify the Division of Specialized Programs of any major changes either increasing or decreasing the firm's professional or financial qualifications, capabilities, personnel, **address, firm name change,** or other of the major qualification criteria.

(10) [~~(14)~~] The **user division or office** [~~consultant prequalification committee~~] shall review the updated information received from the firm and shall reclassify the firm as appropriate with respect to types of work and capacity of the firm.

(11)(a) If a prequalified firm fails to notify the Division of Specialized Programs of a change of address, it shall be removed from the list of prequalified firms until it notifies the division of its new address.

(b) Removal from the list of prequalified firms pursuant to this subsection, shall not be a basis for appeal under the provisions of Section 5 of this administrative regulation.

Section 5. Appeal Procedure for Firms Not Qualified. (1) A firm may appeal any disapproval relating to its request for approval of a prequalification category pursuant to Section 4 of this administrative regulation.

(2) **The cabinet shall establish a consultant prequalification committee to evaluate the statements of qualifications of firms which appeal a disapproval rating.**

(3) The members of the consultant prequalification committee shall be the following:

(a) Director, Division of Specialized Programs, chairperson;

(b) Executive Director, Office of Aeronautics;

(c) Director, Division of Traffic;

(d) Director, Division of Design;

(e) Director, Division of Bridges;

(f) Director, Division of Materials;

(g) Director, Division of Planning;

(h) Director, Division of Environmental Analysis;

(i) Director, Division of Maintenance;

(j) Director, Division of Construction; and

(k) Director, Division of Mass Transportation.

(4) An appeal shall be made in writing to the chairman of the consultant prequalification committee within thirty (30) days of notification of the action of the committee.

(5) [~~(3)~~] The basis of the appeal and the relief sought shall be stated in the written communication to the chairman.

(6) [~~(4)~~](a) Within sixty (60) days from receipt of an appeal, the committee **members or their designees** shall review the appeal and shall make **a** [~~its~~] decision regarding the appeal.

(b) If the firm agrees, the committee may delay its decision for an additional sixty (60) days while the committee meets with the firm to

discuss the appeal.

(7) [~~(5)~~] The committee shall notify the State Highway Engineer and the firm of its decision.

(8) [~~(6)~~] If the firm's appeal is denied by the committee, the firm may appeal the decision to the State Highway Engineer within thirty (30) days of written notice of denial.

(9) [~~(7)~~] The State Highway Engineer shall notify the firm of his decision within thirty (30) days. The decision of the State Highway Engineer shall be final.

Section 6. Conditional Prequalification. (1) The **user division or office or** consultant prequalification committee may grant conditional prequalification to a firm if the firm:

(a) Has no direct highway or transportation experience but has identified personnel which have technical training or education and other types of experience which may allow the firm to perform the required services; or

(b) Performed poorly on past projects for the cabinet or has been removed from the list of prequalified firms for performance-related reasons and has restructured itself to address the problems.

(2) After the firm has performed services for the cabinet in the category of work for which it was conditionally prequalified, it may request a prequalification determination from the committee in accordance with Section 4 of this administrative regulation.

(3) Denial of conditional prequalification of a firm to perform services for the cabinet shall not be appealed.

Section 7. Procurement Bulletin and Advertisement for Selection of Professional Firms for Engineering of Related Services. (1)(a) The **user division or office shall recommend the evaluation factors and relative weightings to the Transportation Cabinet Secretary. Unless unique or particularly complex circumstances exist, the evaluation factors shall be selected from the list set forth below. The** Transportation Cabinet Secretary shall approve the evaluation factors and relative weighting placed on each of the factors that appear in a procurement bulletin for selection of professional firms for engineering or related services. [~~Unless the procurement bulletin contains a different set approved by the secretary of the cabinet, the evaluation factors shall be:~~]

1. Relative experience of professional personnel assigned to project team:

a. With transportation projects for the Kentucky Transportation Cabinet; or

b. With transportation projects for federal, local or other state governmental agencies;

2. Capacity to comply with project schedule;

3. Past record of performance on project of similar type and complexity; [~~and~~]

4. Project approach and proposed procedures to accomplish the services for the project;

5. Location where the work will be performed;

6. Special or unique expertise;

7. Special or unique equipment; and

8. Familiarity with geographic areas and resources.

(b) **The weighting of each factor shall be published** [~~All four (4) factors shall be weighted equally unless published otherwise~~] in the announcement for the specific project.

(2)(a) A procurement bulletin prepared by the cabinet shall include the following:

1. A request for proposal for each project anticipated to be contracted during a specified period of time which includes the following:

a. The general scope of the project;

b. A request for expression of general interest;

c. A request for a statement of technical qualification; and

d. Any requirements for Disadvantaged Business Enterprise (DBE) utilization;

2. A list of the firms prequalified in each category as of the date of the bulletin;

3. A list of the firms prequalified in each category and certified as a disadvantaged business enterprise in accordance with 600 KAR **4:010** [~~3:010~~] as of the date of the bulletin.

(b) A copy of the procurement bulletin shall be mailed to each firm prequalified in any category to perform engineering or related services for the cabinet.

(c) If deemed appropriate by the State Highway Engineer, the procurement bulletin may indicate the maximum fee for a particular proposed project or require the initial solicitation of a complete work price and qualification proposal.

(d) A procurement bulletin for statewide engineering or related services may specify that more than one (1) firm may be selected to provide the services requested in the bulletin.

(3) Each time a procurement bulletin is published, the cabinet shall place an advertisement of the cabinet's need for engineering or related services and availability of the procurement bulletin in at least two (2) newspapers of general, multicounty circulation and one (1) newspaper which has minorities as its targeted readership.

(4)(a) A prequalified firm responding to a procurement bulletin for engineering or related services shall submit to the Division of Specialized Programs the following:

1. The specified number of copies of a completed Response to Announcement for Engineering or Related Services, form TC 40-15 revised June, 1993. Form TC 40-15 is incorporated by reference as a part of this administrative regulation;

2. A letter of transmittal which summarizes the scope of services;

3. Item numbers **from the Six (6) Year Plan, when appropriate,** placed on all correspondence and any forms;

(b) A prequalified firm responding to a procurement bulletin for construction-related engineering services shall submit to the Division of Specialized Programs in addition to the items in subsection (4)(a) of this section the Supplemental Information in Response to Announcement for Construction Services, form TC 40-7 revised June, 1992. Form TC 40-7 is incorporated by reference as a part of this administrative regulation.

(c) A prequalified firm which proposes to employ a subcontractor when responding to a procurement bulletin shall submit to the Division of Specialized Programs in addition to the other items required by this subsection the Subconsultant Qualifications for Response to Advertisement for Engineering and Related Services, form TC 40-15-SUB revised June, 1993. Form TC 40-15-SUB is incorporated by reference as a part of this administrative regulation.

(d) A firm not responding with the correct number of copies or providing incomplete information on the forms shall not be considered for selection.

(5) In addition to complying with subsection (3) of this section, a firm which has not been prequalified shall submit the number of copies specified in the procurement bulletin of the forms required for prequalification in Section 4 of this administrative regulation and a like number of the firm's marketing brochures **at least one (1) week prior to the deadline**.

(6)(a) The Director, Division of Specialized Programs, shall certify the list of firms that responded to the procurement bulletin in a timely manner to the appropriate professional engineering services selection committee.

(b) Responses received after the deadline shall be returned to the firm and shall not be listed for consideration to perform the project.

(c) The list of responses to the procurement bulletin shall be confidential until the contract is negotiated and executed and the selected firm receives a notice of approval for payment from the Division of Specialized Programs as set forth in Section **15** [~~16~~] of this administrative regulation.

Section 8. Establishing a Professional Engineering Services Selection Committee. (1) A professional engineering services

selection committee shall be selected as set forth in KRS 45A.810(5) and (6).

(2)(a) The **Transportation Cabinet Secretary** ~~[State Highway Engineer]~~ shall annually request voluntary applications from the professional engineering staff in the cabinet for availability to serve in the pool of six (6) professional engineers required by KRS 45A.810(5)(a).

(b) The **Transportation Cabinet Secretary** ~~[State Highway Engineer]~~, or his designee, shall review all applications and submit a list of ten (10) applications from which the secretary shall select six (6) to serve in the pool for a period of one (1) year.

(c) Only persons who are merit employees of the cabinet and registered professional engineers of the Commonwealth shall be appointed to the pool.

(d) A person serving on the professional engineering services selection committee from this pool shall not be eligible to also serve on the same selection committee as a representative of a user division as specified KRS 45A.810(5)(b).

(3)(a) The director of the user division that shall be responsible for monitoring the professional services shall appoint two (2) professional engineers from either the user division or the same functional area from the highway district offices where the project is located.

(b) If the user division does not have two (2) professional engineering merit employees or if the services in the announcement are for nonengineering but related services, the director shall appoint two (2) merit employees who have familiarity and experience related to the services that are being contracted.

(c) If the director is a merit employee, the director may appoint himself to the committee.

(d) If there are two (2) user divisions with approximately equal or separate responsibilities for the project, upon approval of the Director of the Division of Specialized Programs, each co-user division shall appoint one (1) member to the selection committee.

(e) If the cabinet is procuring professional engineering or related services in conjunction with another agency or governmental entity or state, that unit outside the cabinet may be designated as a co-user division and be eligible to appoint one (1) member of the selection committee.

(4) An employee of the cabinet shall not be required to involuntarily serve as a member of a professional engineering services selection committee.

(5) Each member of a professional engineering services selection committee shall execute a Certificate of Understanding of Restrictions for Members of Professional Engineering Services Selection Committee, form TC 40-9 effective July, 1992. This form is incorporated by reference as a part of this administrative regulation.

(6)(a) If the individual, randomly selected to serve on a selection committee in accordance with KRS 45A.810(5)(c) is an employee of a consulting firm, that consulting firm shall not be considered for any projects which are reviewed by that selection committee.

(b) If a firm submitted a response under this circumstance, the firm's response for that project shall be returned by the selection committee with a letter of explanation.

(7) **After issuing** ~~[Upon receipt of]~~ written approval ~~[from the secretary of the cabinet]~~ to contract for a firm to perform professional engineering or related services, the **secretary of the cabinet** ~~[State Highway Engineer]~~, or his designee, shall establish a professional engineering services selection committee for each project to be advertised.

(8) The Division of Specialized Programs shall provide each professional engineering services selection committee with the necessary administrative and technical support and office supplies.

(9)(a) Each member of a professional engineering services selection committees shall comply with the Executive Branch Code of Ethics established in KRS Chapter 11A.

(b) Each member of a selection committee shall scrupulously comply with both the letter and the spirit of the cabinet's Official Order Number 94057 regarding Conflict of Interest which was issued on March 9, 1992. This official order is incorporated by reference as a part of this administrative regulation.

Section 9. Operation of a Professional Engineering Services Selection Committee. (1)(a) The initial meeting of a professional engineering services selection committee shall be called by the Division of Specialized Programs.

(b) **A quorum for the initial meeting shall be three (3) of the six (6) members.** ~~[At the initial meeting the selection committee shall elect a chairperson and vice chairperson who shall hold their positions for the duration of the selection committee's participation in a project.]~~

(2)(a) Meetings of a professional engineering services selection committee may be called by the chairperson at a mutually convenient time during normal working hours with at least one (1) week's notice.

(b) Special meetings may also be called upon consensus of four (4) of the voting members of the selection committee.

(c) A motion or decision of the selection committee shall require a simply majority affirmative of all voting members present for passage.

(d) A quorum **for all but the initial meeting** shall be constituted by four (4) of the five (5) voting members present.

(e) Voting by proxy shall not be allowed.

(3)(a) The professional engineering services selection committee shall give fair and impartial consideration to all responses certified in accordance with KRS 45A.825(6).

(b) The selection committee shall utilize the evaluation factors and weights indicated in the announcement for each project to screen all certified firm responses.

(c) Prior to the meeting of the selection committee to determine and rank the three (3) most qualified firms, each voting selection committee member shall review all certified responses and preliminarily evaluate and numerically rate each firm using the weighted evaluation factors that appeared in the procurement bulletin.

(4) At the meeting of the selection committee, each member's ratings shall be used to select the most qualified firms according to that member's ratings.

(5) The entire selection committee shall discuss all of the firms which have been rated by any member as one (1) of the three (3) most qualified of the firms certified to the selection committee for evaluation.

(6) Based on a consensus of the selection committee any of the firms discussed in subsection (4) of this section may be eliminated from further consideration for this project.

(7)(a) Each member of the selection committee shall individually evaluate and rate and by secret ballot rank each of the firms remaining for consideration based on the published evaluation factors and weights.

(b)1. Based on all ratings performed in subsection (7)(a) of this section, the three (3) most qualified firms shall be established by the selection committee.

2. In case of a tie rating for one (1) of the three (3) most qualified positions the selection committee shall rediscuss then reevaluate the firms which had the tied ratings until the tie is broken.

(8) The selection committee shall rediscuss the three (3) firms established as the most qualified.

(9)(a) The selection committee shall by secret ballot rank the three (3) firms.

(b) In case of a tie for one (1) of the three (3) rankings, the selection committee shall rediscuss and revote between the tied firms.

(10) If the selection committee elects, it may interview any of the responding firms to aid in its determination of the best qualified firm.

(11) For selection committee reviews involving statewide services advertised in accordance with Section 7(2)(d) of this administrative regulation, the committee shall rank the same number of firms as specified in the procurement bulletin, but at least three (3) firms.

(12) [~~Prior to submission of the contract to the LRC Personal Services Contract Review Subcommittee, each selection committee member shall sign a form certifying that rankings and ratings were made considering the evaluation factors published in the procurement bulletin.~~

~~(13)~~] The evaluations and ratings of the individual selection committee members shall be considered preliminary and confidential working documents and shall not be available to the public.

(13) [~~(14)~~](a) The chairman of the professional engineering services selection committee shall notify the Director of the Division of Specialized Programs of the firms determined by the committee to be the three (3) best qualified and the order of their ranking.

(b) The Division of Specialized Programs shall send the letters required in KRS 45A.825(7)(c).

(c) The Division of Specialized Programs shall immediately notify by letter the top-ranked firm of its selection for the advertised project.

Section 10. Prenegotiation Procedures. (1) The selected firm shall meet with cabinet representatives **in accordance with the schedule identified in the procurement bulletin** to discuss in detail the scope of services to be provided by the firm for the project.

(2) After this meeting, the firm shall submit the following to the cabinet:

(a) For roadway design, work units which qualifies the tasks to be performed to achieve the roadway design services that appeared in the advertisement or procurement bulletin.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the firm; or

c. Reject and ask the firm to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the firm, each shall independently develop labor rates to be applied to the work units to determine manhours for each task.

(b) For structure work, work units include a description of the structure to be designed including but not limited to type, length, span arrangement, curves, skew, pilings based on preliminary geotechnical information and any other pertinent considerations.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the firm; or

c. Reject and ask the firm to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the firm, each shall independently develop labor rates to be applied to the work units to determine manhours for each task.

(c) For environmental assessments, a copy of the work units and corresponding manhours to achieve each task including all subconsultants.

(d) For geotechnical assessments a copy of the work units which qualifies the tasks to be performed to achieve the geotechnical services that appear in the announcement.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the firm; or

c. Reject and ask the firm to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the firm, each shall independently develop labor rates to be applied to the work units to determine manhours for each task.

(e) For bridge maintenance inspection a copy of work units and proposed equipment usage to achieve the inspection services that appeared in the announcement.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the firm; or

c. Reject and ask the firm to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the firm, each shall independently develop labor rates to be applied to the work units to determine manhours for each task.

(f) For planning studies, work units which qualifies the tasks to be performed to achieve the planning study services that appeared in the announcement.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the firm; or

c. Reject and ask the firm to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the firm, each shall independently develop labor rates to be applied to the work units to determine manhours for each task.

(3) The firm shall submit to the Division of Specialized Programs a fair and reasonable fee proposal which shall be prepared using the following:

(a) Personnel classifications and average wage rates for each classification as they appear in the audit and adjusted for work in the future years;

(b) Distribution of work by the personnel classifications;

(c) Overhead rates as determined by an audit;

(d) Subcontractors and fee proposals for each;

(e) Direct expenses not included in the overhead and subject to the limitations of Section 11(3)(c) and (d) of this administrative regulation; and

(f) Manhours to achieve the agreed upon task to achieve the scope of services that appear in the advertisement or procurement bulletin.

(3) After the Division of Specialized Programs requests a proposal and fee estimate from the firm, the user division shall:

(a) Prepare an estimate of resources required to complete the project;

(b) Discuss the project with other divisions and request resource estimates from them as necessary; and

(c) Coordinate all of the resource estimates from other divisions to be used by the Division of Specialized Programs in negotiation of the contract.

Section 11. Financial Records of Professional Firms. (1) A professional firm which has been prequalified shall allow the cabinet access to all financial information necessary to determine the firm's direct wage rates, indirect cost rates, overhead and direct project charges which are not included in overhead rates.

(2) These firms shall maintain all financial records including payroll time records for all employees including the firm's principals in accordance with 48 CFR 1 Part 31.

(3)(a) The maximum **direct** salary for a principal or partner of a professional firm shall be $75,000 per year (thirty-six (36) dollars and six (6) cents per hour);

(b) **In the calculation of indirect costs for overhead, the maximum salary for a principal or partner of a professional firm for administrative purposes shall be $100,000 per year;**

(c) The maximum allowable overhead rate shall be 150 percent;

(d) [~~(c)~~] Travel expenses for firm employees or survey crews shall be limited to those incurred from an office in Kentucky [~~or an office within fifty (50) air miles of Kentucky~~];

(e) [~~(d)~~] Direct expenses not included in overhead shall have the following limits:

1. Passenger car - twenty-five (25) cents per mile;

2. Truck or four (4) - wheel drive vehicle - thirty-five (35) cents per mile;

3. Lodging:

a. Professional staff - fifty-five (55) dollars per night per person; and

b. Survey field personnel - seventy (70) dollars per night for two

(2) persons **in one (1) room**;

4. Meals:

a. Breakfast - five (5) dollars per day per person;

b. Lunch - five (5) dollars per day per person; or

c. Dinner - ten (10) dollars per day per person.

5. Personal computer time - fifteen (15) dollars per hour;

6. Photocopying - ten (10) cents per page;

7. Blueprints - **actual cost incurred not to exceed** one (1) dollar per sheet**, but excluding labor costs if subcontracted**;

8. Mylar - **actual cost incurred not to exceed** four (4) dollars per sheet**, but excluding labor costs if subcontracted**;

9. Printing of reports - estimated cost from the printer; and

10. Travel time for survey crew - travel time to and from a job site in hours multiplied by the survey crew wage rate multiplied by one and three-tenths (1.3) for salary additives.

(f) To compute the average hourly pay rate for any job classification at the firm, the number of available annual working hours per year shall be 2,080.

(4) This information shall be reviewed annually **and** [~~or~~] at the discretion of the cabinet.

(5) If the cabinet has not audited the firm in the previous twelve (12) months, the last available audit may be used for determination of the fee specified in the contract with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates or direct project expenses.

(6) If the firm has a current audit of sufficient detail from a federal, state or local governmental agency, the negotiation unit may use the overhead rates, wage rates and direct project expenses from that audit in negotiating a fee with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates or direct project expenses.

(7) Quarterly, the Division of Specialized Programs shall select a minimum of **one (1) and a maximum of** three (3) lump sum contracts that have been completed during the previous three (3) months and shall request an audit from the Department of Fiscal Management.

Section 12. Methods of Contracting with Professional Firms. (1) The following methods of contracting with professional firms shall be acceptable:

(a) Lump sum;

(b) Cost plus a fixed fee;

(c) Specific rates of compensation; or

(d) Cost per unit of work.

(2)(a) When the cabinet chooses the lump sum method of contracting, the firm shall present a statement to the Division of Specialized Programs showing the probable cost for the elements of work and the expected **operating margin** [~~profit~~].

(b) This statement shall include a supported breakdown of the direct and indirect costs and subcontractor costs which the firm expects to incur.

(c) The method of dividing the project into work units and the calculation of related time units shall be devised so that the estimate can be easily reviewed.

(d) The Division of Specialized Programs and the user division shall verify the following supporting documentation before recommending the contract for approval:

1. Reasonableness of the amount proposed and consideration of the degrees of risk and responsibility to be assumed by the professional firm;

2. The extent, scope, complexity, character and duration of the required services;

3. Professional and financial investments to be required of the firm;

4. The firm's normally expected return for such services;

5. Conditions under which the professional firm is expected to perform;

6. The cabinet's estimate of the appropriate amount for the services required; and

7. The cabinet's findings on the basis of experience and knowledge.

(3)(a) When the cabinet chooses the cost plus a fixed fee method of contracting, an upper limit of payment of actual cost shall be established which cannot be exceeded without obtaining cabinet approval.

(b) During negotiations, the Division of Specialized Programs or other negotiation unit shall be responsible for establishing the upper limit along with the fixed fee to be paid to the professional firm for the services required.

(c) The Division of Specialized Programs or other negotiation unit shall establish the fixed fee and upper limit based on past experience gained from negotiations of similar projects, judgment regarding scheduling and complexity of work and the user division's estimates.

(4)(a) When the cabinet chooses the specific rate of compensation method of contracting, the Division of Specialized Programs or other negotiation unit shall document the basis on which the amount specified as the upper limit or upset limit was established.

(b) The agreement shall contain provisions which permit adjustment to this upper limit when the firm establishes, and the user division agrees, that there has been or is to be a significant change in the:

1. Scope, complexity or character of the services to be performed;

2. Conditions under which the work is required to be performed; or

3. Duration of the work if the change from the time period specified in the agreement for completion of the work warrants such adjustment.

(c) In the case of statewide agreements under which there is to be subsequent individual authorizations, the establishment of a maximum amount shall not be required. A maximum amount, however, shall be established for each of the individual authorizations.

(5)(a) When the cabinet is using the cost per unit of work method of compensation, the professional firm shall be paid on the basis of units completed.

(b) This method of contracting is appropriate when the extent of the work cannot be definitely defined but when cost of the work per unit may be determined in advance with reasonable accuracy.

(c) A proposal using this method of contracting shall be supported in the same manner as that indicated for the lump sum method used for professional firms.

(6)(a) For an individual acting as a professional firm, the specific rates of compensation shall include the direct salary costs, salary additives, indirect costs and the net fee. The agreement of supporting data shall specifically identify these costs.

(b) Other direct costs may be included as an element of a specific rate or as independent cost items.

Section 13. Contract Negotiations. (1)(a) The Division of Specialized Programs shall be the designated negotiating agent for the Department of Highways in the cabinet.

(b) If professional engineering or related services are requested by user divisions within the cabinet but not in the Department of Highways, that user division shall be responsible for negotiating the fee.

(2)(a) The Division of Specialized Programs or other designated negotiation unit shall receive the proposal and fee estimate from the professional firm. The proposal submitted by the firm shall include a breakdown of the estimated fee for performing the work including the following:

1. Direct salaries;

2. Overhead;

3. Payroll additives;

4. Other direct costs including cost of materials which are not

included in the overhead;

5. Subcontractor costs;

6. **Operating margin** [~~Profit~~]; and

7. Use of DBE firms.

(b) The Division of Specialized Programs or other designated negotiation unit shall analyze the proposal and may confer with others regarding the proposal as necessary. The proposal shall be used as a basis for further negotiation of the professional services agreement.

(c) Unreasonable or deliberately inflated proposals shall be rejected and may be cause for terminating negotiations in accordance with **KRS 45A.825(9)** [~~Section 14 of this administrative regulation~~].

(3) If the contract which is being negotiated uses a method of compensation other than lump sum, the professional firm shall use an accounting system which segregates and accumulates reasonable, allocable and allowable costs to be charged to a contract for an audit by the Department of Fiscal Management.

(4)(a) If a firm intends to utilize the services of a subcontractor to perform any part of the work, at the time of negotiations the firm shall submit a fee proposal for the amount of work to be subcontracted.

(b) The fee proposal shall be based on the audited overhead and wage rates for the subcontractor.

(c) A subcontractor shall be prequalified with the cabinet to perform the services to be subcontracted to it if the services are required to be prequalified.

(d) Prior approval from the Division of Specialized Programs or other negotiation unit shall be necessary.

(e) If a firm desires to utilize a subcontract to perform part of the work after a contract has been approved and notice has been given to begin work, the procedures set forth in Section **17** [~~18~~] of this administrative regulation shall be followed.

(5) A firm which is awarded a contract for professional engineering or related services with the cabinet shall perform at least fifty (50) percent of the dollar value of the work for the project unless otherwise approved by the Director of the Division of Specialized Programs.

(6)(a) The **operating margin** [~~profit~~] allowed a professional engineering or related services firm shall be allowed only on the negotiated direct labor and overhead costs regardless of the type of contract and shall not exceed the following:

1. Lump sum contract:

a. Fifteen (15) percent of the total direct labor cost plus overhead costs plus all direct expenses not included in the overhead for a contract, including all contract modifications, less than $2,000,000; or

b. Ten (10) percent of the total direct labor cost plus overhead costs plus all direct expenses not included in the overhead for a contract, including all contract modifications, equal to or in excess of $2,000,000; or

2. Unit price contract - fifteen (15) percent of the estimated unit cost at the time of execution of the contract.

(b) A cost plus fixed fee contract shall have a lump sum fee equal to ten (10) percent of the estimated cost at the time of the execution of the agreement.

(7) The Division of Specialized Programs or other negotiation unit shall compare the firm's established fee with the cabinet's estimate to determine both the reasonableness of the fee and areas of substantial differences which may require further negotiation.

(8) The Division of Specialized Programs or other negotiation unit shall negotiate with the professional firm to establish a reasonable fee and basis of payment, including incremental payments for completed work where appropriate, for the services to be performed under the contract.

(9)(a) The firm shall keep written documentation of each negotiations meeting and shall submit to the Division of Specialized Programs or other negotiation unit the following:

1. Minutes of negotiations;

2. As-negotiated fee;

3. As-negotiated manhours;

4. Classification percentage distribution; and

5. Direct cost breakdowns.

(b) [~~The Division of Specialized Programs or other negotiation unit shall prepare negotiation minutes and keep a record of the contract negotiation minutes in the contract file.~~

~~(c)~~] The public shall not be denied access to **the items set forth in paragraph (a) of this subsection.** [~~this document.~~]

(10) After the Division of Specialized Programs or other negotiation unit has negotiated a contract, the head of the unit shall send letters to the two (2) other finalists informing them of the firm which successfully negotiated a contract and the procedure that shall be followed in awarding the contract.

Section 14. [~~Unsuccessful Negotiations. (1) If the Division of Specialized Programs or other negotiation unit is unable to negotiate a satisfactory contract with the professional engineering services selection committee's top ranked firm at a fee that the negotiator considers to be fair and reasonable to the Commonwealth, negotiations with that firm shall be formally terminated by the negotiator.~~

~~(2) The firm and the chairman of the professional engineering service selection committee shall be notified by the negotiation unit, in writing, that negotiations have been terminated.~~

~~(3)(a) The Division of Specialized Programs or other negotiation unit shall then request a proposal and fee estimate from the firm ranked second best qualified by the professional engineering services selection committee and shall proceed to negotiate.~~

~~(b) If negotiation with the second ranked firm is unsuccessful, the firm and the chairman of the selection committee shall be notified in writing by the Division of Specialized Programs or other negotiation unit that negotiations have been terminated.~~

~~(4)(a) The Division of Specialized Programs or other negotiation unit shall then request a proposal and fee estimate from the firm ranked third best qualified by the professional engineering services selection committee and shall proceed to negotiate.~~

~~(b) If negotiations are unsuccessful, the firm shall be notified in writing by the Division of Specialized Programs or other negotiation unit that the negotiations have been terminated.~~

~~(5)(a) The head of the Division of Specialized Programs or other negotiation unit shall notify the chairman of the professional engineering services selection committee that a satisfactory contract could not be negotiated with any of the three (3) selected firms.~~

~~(b) The committee shall then select three (3) additional firms from the respondents to the original procurement bulletin and rank them in order of their competence and qualifications. The negotiation unit shall initiate negotiations with the highest rated firm.~~

~~(c)1. Efforts shall continue until either a satisfactory agreement is reached with a qualified firm or the list of firms that responded to the announcement deemed by the committee to be qualified to perform the services has been exhausted.~~

~~2. In this case, the user division shall review the project scope and submit a recommendation to the State Highway Engineer as to whether to readvertise the project.~~

~~Section 15.~~] Contract Preparation and Execution. (1) The Division of Specialized Programs or other negotiation unit shall prepare an agreement or contract to cover the services to be provided, method and amount of payment, the time of completion and necessary special provisions.

(a) The agreement shall also include the General Provisions Attachment as revised June, 1993 **unless the project is for a consultant structure inspection**. The General Provisions Attachment is incorporated by reference as a part of this administrative regulation.

(b) If the project is for a consultant structure inspection, the agreement shall also include the Division of Maintenance, Consultant Structure Inspection Provisions as revised in May 1993. The Division of Maintenance, Consultant Structure Inspection Provisions are incorporated by reference as a part of this

administrative regulation.

(2) The contract and negotiation minutes shall be sent to the firm for the signature of an authorized representative. All original documents shall be returned to the Division of Specialized Programs or other negotiation unit.

(3) The contract shall be reviewed and approved by the secretary of the cabinet.

(4) When the project is subject to approval from the FHWA and after the contract has received final approval from the cabinet, the Division of Specialized Programs shall send to the FHWA the following requesting their approval:

(a) A copy of the contract;

(b) The negotiated fee **and manhours**;

(c) The firm's fee **and manhour** proposal;

(d) The cabinet's **manhour** estimate;

(e) The minutes of the negotiation;

(f) The minutes of the predesign conference;

(g) A copy of the advertisement and announcement;

(h) The list of firms that responded to the announcement in a timely manner;

(i) The written approval from the secretary of the cabinet to engage a professional firm;

(j) The minutes of the professional engineering services selection committee; and

(k) The memorandum from the chairman of the selection committee stating the ranking of the three (3) best-qualified firms by the professional engineering services selection committee**; and**

(l) The audit report of overhead and wage rates which was used to establish the fee.

(6) If FHWA does not approve the contract, the secretary of the cabinet, after discussion with the State Highway Engineer and staff, may decide to modify the contract, redefine the project, terminate the project or ask for reconsideration by the FHWA.

Section **15.** **[~~16.~~]** Notice to Proceed and Payments. (1) Before a notice of approval for payment can be issued, funds shall be encumbered by the cabinet.

(2) When the Division of Specialized Programs or other negotiation unit receives a copy of the transmittal sheet indicating that the LRC Personal Service Contract Review Subcommittee has received the contract and project information for review, a notice to proceed shall be sent to the firm indicating that it may commence work but it shall not bill for services until specifically authorized to do so.

(3) When the LRC Personal Service Contract Review Subcommittee issues a notification of acceptance on a contract, the Division of Specialized Programs or other negotiation unit shall issue a letter to the firm informing it that it may bill the cabinet for charges incurred while working on the project.

(4)(a) If the LRC Personal Service Contract Review Subcommittee objects to the contract and the cabinet determines that the contract is to be cancelled, the Division of Specialized Programs or other negotiation unit shall notify the firm of the cancellation and shall take necessary steps to close the contract.

(b) If the cabinet determines that the contract is to be modified to comply with the concerns of the LRC Personal Service Contract Review Subcommittee, the Division of Specialized Programs or other negotiation unit shall notify the firm of the necessary modifications and shall follow the contract modification and change order procedures specified in Section **16** **[~~17~~]** of this administrative regulation.

(c) If the cabinet determines that the contract is to be executed as submitted to the LRC Personal Service Contract Review Subcommittee, the Division of Specialized Programs or other negotiation unit shall issue a letter to the firm informing it that it may bill the cabinet for charges incurred while working on the project.

Section **16.** **[~~17.~~]** Contract Administration. All work performed under a professional services contract shall be subject to general supervision, direction, review and approval by the cabinet.

(1)(a) A project supervisor shall be assigned to the project by the director or office head of the user division.

(b) The division director or office head may serve as the project supervisor.

(c) The project supervisor shall be responsible for coordinating all cabinet activities with the firm and for providing necessary supervision through the duration of the contract. This coordination shall include the following:

1. Scheduling, monitoring and controlling the firm's activities; 2. Reporting the status of these activities to the appropriate authority;

3. Periodically reviewing the work to determine if the work:

a. Is acceptable;

b. Is in accordance with the agreement for the particular project; and

c. Scope has changed to the point that it may require a supplemental agreement and increased or decreased compensation.

(2)(a) During the project, the firm may subcontract with other firms to perform specialized services in a manner similar to Section 13(4) of this administrative regulation. The subcontractor shall be prequalified by the cabinet if the services that are subcontracted are required to be prequalified.

(b) If the services to be performed by the subcontractor are subject to prequalification by the cabinet and were not previously identified in the original negotiation or subsequent change orders, the firm shall submit a request for a fee adjustment for the manhours to be performed by the subcontractor.

(c) If the subcontractor services are not subject to prequalification procedures and exceed $25,000, they shall be reviewed by the Department of Fiscal Management for reasonableness of cost. For subcontracts equal to or less than $25,000, the Director of the Division of Specialized Programs or other negotiation unit upon recommendation of the negotiator, may accept the rates and costs if they are reasonable and in line with past costs incurred for similar work.

Section **17.** **[~~18.~~]** Contract Modifications. (1) When it is determined by either the firm or the cabinet that one (1) or more of the following conditions are acceptable and necessary, a contract modification for a fee or schedule adjustment may be requested:

(a) Change in termini or section;

(b) Addition of major phases of work to the negotiated scope of work;

(c) Modification of previously approved work resulting from factors beyond the control of the professional firm;

(d) Modification of a major item, if in the original contract, the item is designated as a basis of the original negotiations and the conditions for a change order consideration are identified in the original contract;

(e) Delay by the cabinet as outlined in each contract; or

(f) Use of a subcontractor for services previously identified to be done by the firm or other subcontractor; or

(g) Availability of current audit established in accordance with Section 11 of this administrative regulation.

(2) The request for a contract modification may be originated by the Division of Specialized Programs, user division, highway district office or the firm.

(3) When the director or office head of the user division determines the change is appropriate, the user division shall advise the firm in writing of the contemplated change in the scope, complexity, extent, character or duration of the original agreement. When additional or reduced compensation is justified, the user division shall request a revised proposal from the firm.

(4) The contract modification shall be negotiated using the procedures set forth in Section 13 of this administrative regulation.

(5) The Division of Specialized Programs or other negotiation unit shall send the Change Order form TC 61-5 as revised August, 1986

or the Change Order form, TC 63-53 revised August, 1986, to the firm for its approval. These forms are incorporated by reference as a part of this administrative regulation.

(6) After approval by the cabinet, the Change Order, LRC's Proof of Necessity form and other supporting documentation shall be submitted to the LRC Personal Service Contract Review Subcommittee.

(7) For projects requiring FHWA oversight, the approved Change Order shall be sent to the Federal Highway Administration for approval.

(8) Funds shall be encumbered by the cabinet sufficient to pay for the approved Change Order.

Section **18.** [~~19.~~] Completion of Contract. (1) Upon completion of the contract, the cabinet shall review the work performed to determine that it meets the terms and conditions of the contract and shall evaluate the firm for future reference.

(2) The project supervisor or the director of the user division shall review the work performed by the firm, including any progress and final reports, to determine that all terms and conditions of the contract have been met before processing the final voucher for payment or releasing the firm.

(3) Before approving the final invoice for payment, the director of the user division or the project supervisor shall evaluate the firm and prepare written documentation of the firm's performance on the project.

(4) The user division shall send the firm written documentation of the firm's performance for the project. Copies of the documentation shall be placed in the contract file maintained by the Division of Specialized Programs and in the firm's experience record file.

(5)(a) The firm may appeal in writing a below average rating to the user division director within thirty (30) days of written documentation of the firm's performance for the project.

(b) The appeal shall specifically set forth the reasons why the firm believes the below average rating is in error.

(c) The user division director shall notify the firm within thirty (30) days from the firm's appeal of the director's decision of whether or not to revise the performance rating.

(d) The firm may appeal in writing the user division director's decision to the chairman of the consultant prequalification committee within thirty (30) days.

(e) The consultant prequalification committee shall review all documentation relating to the firm's performance for the project. The committee may discuss the performance rating with the project supervisor or the firm.

(f) The committee shall notify the firm and the user division of its decision within ninety (90) days from the firm's appeal.

(g) If the firm's appeal is denied by the consultant prequalification committee, it may appeal the decision to the State Highway Engineer within thirty (30) days of written notice of denial of its appeal by the consultant prequalification committee.

(h) The State Highway Engineer shall notify the firm of his decision within thirty (30) days.

(i) The decision of the State Highway Engineer shall be final.

(j) If the performance evaluation documentation is revised, the initial documentation shall be removed from all files and replaced with the revised performance document.

(6) The Director of the Division of Specialized Programs or head of other negotiation unit shall request the Department of Fiscal Management to perform a final audit if appropriate. The audit shall determine the total allowable contract costs and the total dollars to be paid to the firm. All contracts utilizing a cost plus fixed rate method of payment shall be audited.

(7) The user division shall forward the Federal Highway Administration a copy of all progress and final reports for federal-aid projects if required or requested by the FHWA.

Section **19.** [~~20.~~] Cancellation of Contract. (1) Each professional service contract shall include a provision for the termination of the agreement and shall allow for the cancellation of the contract by the cabinet with proper notice to the firm.

(2) When the cabinet decides to cancel a professional services contract, the Division of Specialized Programs or other negotiation unit shall notify the firm of the cancellation and of the reasons for the cancellation.

(3) The cabinet shall be liable only for payment of services up to the date of cancellation of the contract as specified by the terms of the contract.

Section **20.** [~~21.~~] Payments to Firms. Before payment of a partial or final request for payment, the cabinet shall review the work of the firm, including any progress or final reports, to ensure that the work for which the payment is to be made has been completed and that the terms and conditions of agreement have been satisfactorily followed.

(1) During the course of the project, progress billings shall be submitted by the firm as agreed upon in the contract. The firm shall submit an Engineer's Pay Estimate, TC 61-408 revised March, 1988 with a progress report as an invoice to the chief district engineer or director of the user division. This form is incorporated by reference as a part of this administrative regulation.

(2) The chief district engineer or director of the user division or his designee shall review the estimate, verify that the work has been completed as described in the document, and sign the engineer's pay estimate.

(3) Final invoices and requests for payment shall be authorized only after all work has been reviewed and accepted or approved, including any final reports prepared by the firm. All terms and conditions of the contract shall be satisfactorily met and the final audit shall be performed prior to processing the final payment.

Section **21.** [~~22.~~] Material Incorporated by Reference. All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or copied at the Division of Specialized Programs, 7th Floor State Office Building, 501 High Street, Frankfort, KY 40622. Its telephone number is (502)564-4555. Its office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
BOB BODNER, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: August 3, 1993
FILED WITH LRC: August 5, 1993 at 4 p.m.

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

905 KAR 2:001. Definitions for 905 KAR Chapter 2.

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to define terms used for child day care facilities.

Section 1. Definitions. These definitions shall be used in 905 KAR 2:001, 905 KAR 2:011, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(1) **"Adequate supervision" means that qualified staff devote**

full time and attention to the children being supervised and keep the children within sight and sound.

(2) "Cabinet" means the Cabinet for Human Resources.

(3) [~~(2)~~] "Caregiver" means child day care staff, including volunteers, who work in a child day care facility.

(4) [~~(3)~~] "Child day care staff" means persons, including volunteers, who work in a child day care facility.

(5) [~~(4)~~] "Day care" means care of a child in a facility which **regularly** provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(6) [~~(5)~~] "Director" **means an individual who meets the education and training requirements as specified in 905 KAR 2:110, Section 3, and whose primary full-time job responsibilities are to ensure compliance with 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:130; and who is responsible for directing the program and for managing the staff at the day care facility specified in their individual job description.** [~~or "provider" means the person responsible for the day-to-day operation of a facility or program for the care of children.~~]

(7) [~~(6)~~] "Facility" means:

(a) A Type I day care facility which is a facility:

1. Other than a dwelling unit which regularly receives four (4) or more children; or

2. Including a dwelling unit, which regularly provides day care for thirteen (13) or more children.

(b) A Type II child day care facility which:

1. Is a home or dwelling unit that is the full-time residence of the licensee; and

2. Regularly provides care apart from parents for seven (7), but not more than twelve (12) children.

(c) The following child day care settings including:

1. Day care;
2. Preschool;
3. Nursery;
4. Child care provided by employers for employees;
5. Kindergartens not accredited by the Kentucky Department of Education pursuant to 704 KAR 5:050;
6. Child care in recreational programs;
7. Montessori;
8. Headstart; and
9. Before or after school child care.

(d) The following child care settings shall not be included:

1. Summer camps certified by the Kentucky Department for Health Services as "youth camps" and providing care for school-age children;

2. Programs operated under Kentucky Department of Education preschool administrative regulations;

3. Grades one (1) through twelve (12) in private schools;

4. Summer programs operated by religious organizations in which a child attends no longer than two (2) weeks;

5. Child care programs operated by the armed services;

6. Child care provided while parents are on the premises other than the employment and educational site of parents;

7. Child care provided by educational programs which includes parental involvement with the care of the child including development of parenting skills;

8. Facilities operated by a religious organization while religious services are being conducted; and

9. Respite care to provide relief for the primary caregiver of a child for a specific period of time.

(8) [~~(7)~~] "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;
(b) **Certified** family child care home;
(c) Adult day care center;
(d) Adult day health care facilities;
(e) Family care home;
(f) Group homes for the mentally retarded or developmentally disabled;
(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospitals;
(h) Intermediate care facilities;
(i) Nursing facilities;
(j) Nursing homes;
(k) Personal care homes;
(l) Skilled nursing facilities;
(m) Psychiatric residential treatment facilities;
(n) Child caring facilities;
(o) Child placing agencies;
(p) Rural primary-care hospitals;
(q) Alzheimer nursing homes;
(r) Youth camps;
(s) Boarding home;
(t) Alternate intermediate services for the mentally retarded or developmentally delayed.

(9) "Immediate danger" means a situation or condition in which one (1) or more children is being harmed or likely to be harmed before appropriate corrective action can be taken as evidenced by:

(a) A continuing condition;

(b) A recurring condition; or

(c) A condition which has caused death or serious physical injury within the past two (2) weeks.

(10) [~~(8)~~] "Infant " means a child under one (1) year of age.

(11) "Licensee" means an individual, partnership, corporation or other entity authorized to operate a day care center.

(12) [~~(9)~~] "Nighttime care facility" means a facility in which children are received for regular, full, or part-time care during the night. The hours of a facility providing nighttime care shall conform to the hours established by the state fire marshal for care given after six (6) p.m.

(13) [~~(10)~~] "Premises" means the building and contiguous property in which day care is provided and licensed.

(14) [~~(11)~~] "Qualified substitute" means a person who meets the requirements of a caregiver.

(15) [~~(12)~~] "Regularly" means the provision of child day care services at a facility for more than ten (10) hours per week.

(16) [~~(13)~~] "Related" means the children, grandchildren, nieces, nephews, or children in legal custody of the operator of the facility.

(17) [~~(14)~~] "Secretary" means the Secretary for the Cabinet for Human Resources.

(18) [~~(15)~~] "School-age child" means a child attending kindergarten, elementary or secondary education.

(19) [~~(16)~~] "Tactile activities" means activities of or relating to the sense of touch.

(20) [~~(17)~~] "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(21) [~~(18)~~] "Twelve (12) clock hours of annual training" means a Cabinet for Human Resources approved program of child development training that is completed by employees and owners who directly care for children as governed by KRS 199.896.

(22) [~~(19)~~] "Twelve (12) clock hours of orientation and child development training" means a Cabinet for Human Resources approved program that is completed by employees and owners who directly care for children, six (6) hours of which shall be completed within the first three (3) months of employment as governed by KRS 199.896 and the remaining six (6) hours shall be completed within the first year **of employment**.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 2, 1993
FILED WITH LRC: August 6, 1993 at 11 a.m.

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

905 KAR 2:090. Child care facility licensure.

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish licensure requirements for child day care facilities.

Section 1. Application. Prior to licensure, a complete application shall be submitted to the cabinet. The application for a license to operate a day care center, L&R-204, herein incorporated by reference, may be obtained from the Office of Inspector General, 4th Floor Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky 40621. The application may be denied in accordance with Section 6 of this administrative regulation.

Section 2. License Issuance. (1) An individual, partnership, corporation, or other entity who has had **[~~a human services center~~]** certification, license, registration or permit to operate a human services center denied **for reasons set forth in Section 6(1)(b) or (c) of this administrative regulation** or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet has initiated denial or revocation action shall not apply for a license to operate a child care facility for a period of five (5) years from the date of revocation.

(a) After the expiration of the five (5) year period, the person may apply for a license after establishing that the applicant has the ability to comply with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice since the time of the prior revocation.

(b) If a license is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the child care facility shall be inspected on at least a quarterly basis. Inspections shall be unannounced.

(2) A license shall be issued for:

(a) A specified physical location;

(b) Operation by a designated sponsor or owner;

(c) Age categories;

(d) A specified maximum number of children to be on premises at one (1) time including children related to the licensee. The number of children for which the facility is licensed shall be determined by:

1. Available space as determined by the State Fire Mar-shall's Office in conjunction with the cabinet;

2. Adequacy of program;

3. Equipment; and

4. Staff.

(e) Nighttime care, if provided; and

(f) Transportation, if provided.

(3) The license shall list the services to be provided by the facility.

(4) To qualify for a license, a child day care facility shall:

(a) Comply with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county and state laws;

(d) Have adequate equipment, supplies, and staff to serve initial enrollment of children;

(e) Have liability insurance in the amount of $100,000 **[~~per child~~]** per occurrence; and

(f) Comply with provisions of this administrative regulation and 905 KAR 2:001, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(5)(a) The facility shall be in compliance with subsection (4) of this section or shall have submitted an acceptable plan of correction.

1. Compliance shall be ascertained through on-site inspections of the facility.

2. Regulatory violations identified during these inspections shall be transmitted in writing to the facility.

(b) The facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days **of the statement of deficiencies**. The plan shall specify the dates by which each of the violations shall be corrected.

(c) Following a review of the plan, the facility shall be notified in writing of the acceptability of the plan.

1. If the plan is unacceptable, the reasons shall be specified.

2. In these cases, the facility shall modify or amend the plan and resubmit within ten (10) days **of notice of the plan's unacceptability**.

(6) A license shall be issued when the facility has met the requirements contained in this administrative regulation and KRS 199.896.

(7) A license shall not be transferable. A change in ownership of a facility shall require a new application and fee. If circumstances covered by the license change, as listed in 905 KAR 2:110, Section 4(4)(b) through (e), notification shall be made in writing to the cabinet. These changes shall not require an additional fee.

(8) The license shall be posted in a conspicuous place.

(9) A facility shall not begin operation without a license to operate from the Cabinet for Human Resources.

(10) A facility operating without having a license shall be subject to legal action.

Section 3. Fees. (1) Licensing fees shall be:

(a) Eighty (80) dollars for initial licensure for a Type I facility;

(b) Forty (40) dollars for initial licensure of a Type II facility; or

(c) Forty (40) dollars for renewal licensure.

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the initial and renewal licensure application. Initial application fee and renewal fees shall not be refunded if a survey has been made by the Cabinet for Human Resources or the State Fire Marshall's Office.

Section 4. Inspections. Representatives of the cabinet shall at all times have the authority to make unannounced inspections of facility's:

(1) Premises;

(2) Records required by 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 through 905 KAR 2:130; and

(3) Programs.

Section 5. Renewal. (1) Licenses shall be renewed annually.

(2) The renewal application and fee shall be submitted one (1) month prior to the expiration date of the license.

(3) **[~~(2)~~]** The facility shall comply with the requirements of Sections 2 and 4 of this administrative regulation.

Section 6. Basis for Denial**, Suspension** or Revocation. **(1)** The Cabinet for Human Resources may deny**, suspend** or revoke a license or application:

(a) **[~~(1)~~]** For failure to meet the standards of this administrative regulation;

(b) **[~~(2)~~]** If the **licensee** **[~~provider~~]**, an adult living in the **facility** **[~~provider's home~~]** or person under the supervision of the **licensee** **[~~provider~~]** has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult;

(c) **[~~(3)~~]** If the **licensee or** **[~~provider,~~]** an adult living in the **facility** **[~~provider's home~~]**:

1. [(a)] Has abused, neglected or exploited a child or an adult; or
2. [(b)] Is listed on the Nurse's Aid Abuse Registry by the Inspector General's Office.

(2) [(4)] If the **licensee** [~~provider~~] has had a human services center or facility registration, certification, permit or license denied **for reasons set forth in subsection (1)(b) or (c) of this section** or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet initiates denial **for reasons set forth in subsection (1)(b) or (c) of this section** or revocation action.

(3) If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the cabinet may suspend or revoke the license immediately.

Section 7. [~~6.~~] Right of Appeal. (1) If a license or application has been denied, **suspended** or revoked, the licensee shall be notified in writing of the right to appeal. The request for a hearing shall be made in writing within fifteen (15) days after receiving the notice of the action of the **cabinet** [~~secretary~~].

(2) Upon receipt of the request for a hearing:

(a) The **cabinet** [~~secretary or his representative~~] shall notify the licensee in writing within fifteen (15) days of the time and place of the hearing.

(b) The **cabinet** [~~secretary~~] shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(c) The hearing officer shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(3) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision shall be final. If license denial or revocation is upheld, the cabinet shall specify the date by which the facility shall close and the licensee shall be notified in writing.

(4) If a provider whose license has been suspended or revoked pursuant to Section 6(3) of this administrative regulation requests a hearing, the cabinet shall conduct a hearing within five (5) working days of receipt of the request for a hearing. The hearing may be continued at the request of the provider.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the children in care.

(b) The cabinet shall render a decision within five (5) working days of the close of the hearing. If a decision is not rendered within five (5) working days of the close of the hearing, the provider shall have its license returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the children in care, the license of the provider shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.

~~[(4) If one (1) of the grounds for denial, suspension or revocation set forth in Section 6 of this administrative regulation exists and the condition creates an immediate danger to the children in care, the cabinet may suspend or revoke the license immediately.~~

~~(a) The provider may request a postdeprivation hearing in writing within fifteen (15) days of receipt of the notice of suspension or revocation. The request shall be mailed to the Office of the Inspector General, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621.~~

~~(b) If requested, the cabinet shall conduct a hearing within thirty (30) days of receipt of the request. The hearing may be continued at the request of the provider.]~~

Section 8. [~~7.~~] Incorporation by Reference. (1) The form necessary for the implementation of the application for license shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected or copied at the Inspector General's Office, CHR Building, 4th Floor, 275 East Main Street, Frankfort, Kentucky, office hours 8 a.m. - 4:30 p.m.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 2, 1993
FILED WITH LRC: August 6, 1993 at 11 a.m.

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

905 KAR 2:100. Certification of family child care homes.

RELATES TO: KRS 17.165, 199.898, 199.8982 [~~Acts 1992, c. 57, Section 1 and 2, p. 412-415~~], 42 USC 602

STATUTORY AUTHORITY: KRS 194.050, 199.8982 [~~Acts 1992, c. 57, Section 1 and 2, p. 412-415~~]

NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. In compliance with KRS 199.8982 [~~SB 211~~], the Department for Social Services has established standards for the certification of family child care homes. These standards are intended to protect the health, safety and welfare of children. [~~This administrative regulation contains the substance of 905 KAR 2:070 which is herein repealed.~~]

Section 1. Definitions. These definitions shall be used in this administrative regulation.

(1) **"Adequate supervision" means that qualified staff devote full time and attention to the children being supervised and keep the children within sight and sound.**

(2) "Assistant" means a person:

(a) Sixteen (16) years of age or older;

(b) Under direct supervision of a provider or substitute provider; and

(c) Has obtained a criminal records check and tuberculosis skin test.

(3) [~~(2)~~] "Cabinet" means the Kentucky Cabinet for Human Resources.

(4) [~~(3)~~] "Child" means a person under thirteen (13) years of age, or under eighteen (18) years of age if the person has been identified as having special child care needs.

(5) [~~(4)~~] "Commissioner" means the Commissioner for the Department for Social Services.

(6) [~~(5)~~] "Family child care home" as governed by KRS 199.8982 [~~SB 211~~] and does not apply to providers who care for their own children, related children or children in legal custody of the provider and up to three (3) unrelated children.

(7) [~~(6)~~] "Home" means the private primary residence of the provider.

(8) [~~(7)~~] "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;

(b) **Certified** family child care home;

(c) Adult day care center;

(d) Adult day health care facilities;

(e) Family care home;

(f) Group homes for the mentally retarded or developmentally disabled;

(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospitals;
(h) Intermediate care facilities;
(i) Nursing facilities;
(j) Nursing homes;
(k) Personal care homes;
(l) Skilled nursing facilities;
(m) Psychiatric residential treatment facilities;
(n) Child caring facilities;
(o) Child placing agencies;
(p) Rural primary-care hospitals;
(q) Alzheimer nursing homes;
(r) Youth camps;
(s) Boarding home;
(t) Alternate intermediate services for the mentally retarded or developmentally delayed.

(9) "Immediate danger" means a situation or condition in which one (1) or more children is being harmed or likely to be harmed before appropriate corrective action can be taken as evidenced by:
(a) A continuing condition;
(b) A recurring condition; or
(c) A condition which has caused death or serious physical injury within the past two (2) weeks.

(10) [~~(8)~~] [~~(7)~~] "Infant" means a child under one (1) year of age.

(11) [~~(9)~~] [~~(8)~~] "Nighttime care" means family home child care in which a child receives regular full, or part-time care during the night, and beginning at 6 p.m.

(12) [~~(10)~~] [~~(9)~~] "Provider" means an owner, operator or person providing care for preschool or school-age children or both inside his own home for less than twenty-four (24) hours a day, and who is not required to be licensed under 905 KAR 2:010 [~~2:090~~].

(13) [~~(11)~~] [~~(10)~~] "Provider's own child" means the providers's own children and children in legal custody.

(14) [~~(12)~~] [~~(11)~~] "Regular" means the provision of child care services in the caregiver's home on more than one (1) day in one (1) week or more than ten (10) hours per week.

(15) [~~(13)~~] [~~(12)~~] "Related child" means a certified provider's grandchildren, nieces and nephews.

(16) [~~(14)~~] [~~(13)~~] "School-age child" shall be considered as one attending kindergarten or above.

(17) [~~(15)~~] [~~(14)~~] "Special needs child" means children who have multiple or severe problems and the Department for Social Service staff has confirmed the need for ongoing specialized care.

(18) [~~(16)~~] [~~(15)~~] "Substitute provider" means a person:
(a) Who is eighteen (18) years of age;
(b) Has obtained a criminal records check and a tuberculosis skin test; and
(c) Is available to provide care in a family child care home.

(19) [~~(17)~~] [~~(16)~~] "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The department shall be responsible for the certification of family child care homes.

(2) Authorized representatives of the department shall have the authority to:
(a) Inspect premises;
(b) Review records required by this administrative regulation; and
(c) Review the program of family child care homes.

(3) Inspections by the department shall be unannounced.

(4) A provider shall apply for certification if the provider is caring for four (4) to six (6) unrelated children and may apply if caring for three (3) or fewer children as governed by KRS 199.8982 [~~SB 211~~].

(5) A person who has had a [~~human services center or facility~~] certification, license, registration or permit to operate a human services center denied **for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation** or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial **for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation** or revocation action shall not apply for a certificate to operate a family child care home for a period of five (5) years from the date of revocation.

(a) After the expiration of the five (5) year period, the person may apply for certification after establishing that the applicant has the ability to comply with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of training in developmentally appropriate child care practice since the time of the prior revocation.

(b) If certification is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the family child care home shall be inspected on at least a quarterly basis. Inspections shall be unannounced as governed by KRS 199.8982.

(6) [~~(5)~~] A provider making application for certification shall:
(a) Complete the DSS-78, Application for Family Child Care Certification, incorporated by reference herein;
(b) Complete the DSS-79, Self-Check List, incorporated by reference herein;
(c) Meet the minimum requirements as governed by KRS 199.8982 [~~SB 211~~];
(d) Submit a criminal records check for adult persons living in the home;
(e) Comply with provisions set forth in Sections 5 through 11 of this administrative regulation. [~~; and~~]
[~~(f) Within three (3) months of the date of preliminary permission to operate, demonstrate completion of training as governed by SB 211;~~
~~(g) comply with deficiencies cited during the inspection of the home specified in subsection (2) of this section.~~]

(7) [~~(6)~~] Upon receipt of the application and fee, staff of the department shall:
(a) [~~Staff shall~~] Review the application [~~and, if acceptable, shall issue a written preliminary permission to operate~~]; and
(b) Conduct an [~~initial~~] inspection of the home [~~shall be made by a representative of the department~~] as governed by KRS 199.8982 [~~SB 211~~].

(8) [~~(7)~~] If the requirements have been met, the home shall be certified and a certificate shall be issued for a two (2) year period.
(a) The certificate shall be displayed where parents can read it and shall contain:
1. The name and address of the provider;
2. Limit of children to be served;
3. Identification number; and
4. Effective and expiration dates.
(b) The certification shall be valid for the certified provider [~~caregiver~~] and the address listed. A change of location [~~address or move change~~] shall require a new certification application and inspection as specified in subsections (6) and (7) of this section. [~~be reported to the Department for Social Services and an updated DSS-79 completed.~~]

(9) [~~(8)~~] If the provider does not [~~wish or cannot~~] comply with the standards set forth in this administrative regulation, within three (3) months of the initial inspection, [~~then~~] the application shall be denied.

(10) [~~Section 3. Renewal. (1)~~] The application for [~~renewal~~] certification process shall be repeated every two (2) years. **The provider shall submit a new application and fee one (1) month prior to the expiration of the certification.**

Section 3. Denial, Suspension, or Revocation. **(1)** [~~(2)~~] The cabinet shall review and may deny, suspend, revoke or refuse certification if the:

(a) [~~(1)~~] [~~(a)~~] Provider, [~~or~~] an adult living in the provider's home or person under the supervision of the provider:

1. [~~(a)~~] [~~1.~~] Has been convicted of a crime related to abuse,

neglect or exploitation of a child or an adult; or

2. [(b)] [2.] Refuses to provide a criminal records check; [or]

(b) [(2)] Provider or/and an adult living in the provider's home has abused, neglected or exploited a child or an adult;

(c) [(3)] Provider [(b) Family child care home] fails to comply with certification standards set forth in this administrative regulation; or

(d) [(4)] Provider has had a human services center or facility registration, certification, permit or license denied **for reasons set forth in paragraph (a) or (b) of this subsection** or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial **for reasons set forth in paragraph (a) or (b) of this subsection** or revocation action.

[(3) The provider shall obtain liability insurance.]

(2) If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the department may suspend or revoke the certification immediately.

Section 4. Appeal. (1) If the cabinet denies, suspends, or revokes [or refuses to renew] a certification, the cabinet shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(2) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receiving the notice of the action from the cabinet.

(3) Upon receipt of the request for hearing, the commissioner, or [commissioner's] designee, shall notify the provider in writing within fifteen (15) days of the time and place of the hearing. The commissioner, or designee, shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(4) The hearing officer shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(5) [(4)] Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision of the hearing officer shall be final. The provider shall be notified in writing of the decision of the hearing officer.

(6) If a provider whose certification has been suspended or revoked pursuant to Section 3(2) of this administrative regulation request a hearing, the department shall conduct a hearing within five (5) working days of receipt of the request. The hearing may be continued at the request of the provider.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the children in care.

(b) The department shall render a decision within five (5) working days of the close of the hearing. If a decision is not rendered within five (5) working days of the close of the hearing, the provider shall have its certification returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the children in care, the certification of the provider shall be suspended pending action of the department to accept the plan of correction or revoke the certification.

(7) [(5)] If denial or revocation of certification is upheld, the commissioner's or designee's notification shall specify the date by which the family child care home shall close.

[(6) If one (1) of the grounds for denial, suspension or revocation set forth in Section 3 of this administrative regulation exists and the condition creates an immediate danger to the children in care, the department may suspend or revoke the certification immediately.

(a) The provider may request a postdeprivation hearing in writing within fifteen (15) days of receipt of the notice of suspension or revocation. The request shall be mailed to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) If requested, the department shall conduct a hearing within thirty (30) days of receipt of the request. The hearing may be continued at the request of the provider.]

(8) [(7)] [(6)] A family child care home continuing to have four (4) to six (6) unrelated children in attendance after the closing date established by the commissioner shall be subject to legal action by the cabinet as provided by law.

Section 5. Standards for the Provider. (1) Qualifications of provider and staff:

(a) The provider shall be at least eighteen (18) years of age;

(b) The provider shall meet minimum requirements as governed by KRS 199.8982 [SB 211]; and

(c) Beginning with the second year of operation, the provider shall participate annually in at least six (6) hours of training in child development approved by the Department for Social Services.

(2) Staff-child ratio.

(a) A provider shall not provide care for more unrelated children than the number of children for which the family child care home is certified

(b) [(a)] If more than four (4) infants, including the certified provider's own or related infants, are in care, the certified provider shall **have** [employ] an assistant **present**.

(c) [(b)] A certified provider shall not care for more than six (6) children under the age of six (6) years old**, including** [. This shall include] the certified provider's own or related children.

(d) [(c)] The maximum number of children in the care of a certified provider, including the providers' own or related children, shall not exceed ten (10).

(3) Within three (3) months of the date of application for certification the provider shall:

(a) Demonstrate completion of training as governed by KRS 199.8982; and

(b) Obtain liability insurance.

(4) The provider shall be currently certified in:

(a) Infant and child cardiopulmonary resuscitation (CPR) by:

1. The American Red Cross;

2. The American Safety Council; or

3. The American Heart Association; and

(b) Infant and child first aid by:

1. The American Red Cross; or

2. The American Safety Council.

(c) The effective date of this subsection shall be July 1, 1994. However, the effective date of this subsection may be revised by administrative regulation to a date prior to July 1, 1994, contingent upon accessibility of training in all areas of the Commonwealth. [The provider shall be annually certified in cardiopulmonary resuscitation (CPR). The effective date of this requirement shall be July 1, 1994. However, the effective date may be revised by administrative regulation to January 1, 1994, or to a date prior to July 1994, contingent upon the assessability of CPR training in all areas of the Commonwealth.]

Section 6. The Family Child Care Home Environment. (1) The provider's home and play areas used for child care shall be safe and have adequate heat, light and ventilation.

(2) Each floor level used for child care shall have at least one (1) unblocked exit and at least one (1) smoke detector and fire extinguisher.

(3) The home shall be free of hazards and the following items

shall be kept inaccessible to children:

(a) Medications and drugs;

(b) Cleaning supplies, poisons and insecticides;

(c) Guns, knives, scissors and sharp objects;

(d) Power tools, lawn mowers, hand tools, nails and other equipment;

(e) Matches, cigarettes, lighters and flammable liquids;

(f) Alcoholic beverages;

(g) Plastic bags; and

(h) Litter and rubbish.

(4) Electrical outlets not in use shall be covered.

(5) Electric fans, floor furnaces, or freestanding heaters or fi replaces, shall be out of the reach of children or have a safety guard on them to protect children from injury.

(6) The home shall have at least one (1) telephone in working order with a list of emergency numbers posted by each telephone, including numbers for the:

(a) Police;

(b) Fire station;

(c) Emergency medical care, rescue squad; and

(d) Poison control center.

(7) Equipment and toys shall be developmentally appropriate for the ages and number of children in care and be kept in good repair.

(8) Stairs and steps used for children in care shall be solid, safe and railed. Indoor stairs with more than two (2) steps shall be blocked if children in care are infants or toddlers.

(9) The provider shall maintain first aid supplies that are easily accessible for use in an emergency, and shall wash superficial wounds with soap and water before bandaging. First aid supplies shall include a fully equipped first aid kit containing unexpired items approved by the American Red Cross.

(10) Indoor areas, including furnishings, used for child care shall contain a minimum of thirty-five (35) square feet per child for play and for activities which meet the development needs of the children in care.

(11) Outdoor play areas shall be free of hazards and shall be fenced or the provider shall make provisions to assure that the children are under direct supervision in outdoor play areas.

(12) Outdoor stationary play equipment shall be securely anchored.

(13) Practice fire and tornado drills shall be conducted with the children at least monthly and documented.

(14) Health and sanitation for the child care environment shall require that the provider:

(a) Have a home that is kept clean, uncluttered and free of insects and rodents;

(b) Have a water supply properly located, protected, adequate, and of a source approved by the local health department;

(c) Have bathrooms, including toilets, sinks, and potty chairs that are sanitary and in good working condition;

(d) Assure that a covered, leak-proof container which is emptied and cleaned daily is available for soiled diapers;

(e) Refrigerate perishable food and beverages. The refrigerator shall be in working order and maintain a temperature of forty (40) degrees or below and frozen food shall be kept at temperatures to remain frozen, except if being thawed for preparation or use;

(f) Label bottles for each individual child, except if there is only one (1) bottle-fed child in care;

(g) Serve only pasteurized milk or milk products;

(h) Screen windows and doors used for ventilation;

(i) Have household pets vaccinated for rabies;

(j) Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;

(k) Provide adequate space for a rest-time for each child in care for more than four (4) hours. Individual linens shall be provided for each child and shall be changed at least weekly or if they become soiled or wet.

(15) Program for children. A plan for daily activities and routines shall be established.

(16) Children shall be released from the family child care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; and

(c) A person in an emergency designated over the telephone by the parent.

Section 7. To assure a healthy environment, the provider shall:

(1) Maintain current immunizations certificates for each child within thirty (30) days of enrollment;

(2) Maintain for each child a health and emergency information form completed and signed by the child's parent or guardian. The completed form shall be on file on the first day the child attends and shall include the following information:

(a) The child's name, address, and date of birth;

(b) The names of individuals to whom the child may be released;

(c) The general status of the child's health;

(d) Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;

(e) The names and phone numbers of persons to be contacted in an emergency situation;

(f) The name and phone number of the child's physician and preferred hospital; and

(g) Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.

(3) Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;

(4) Prohibit prescription medications or aspirin to be administered to a child except as authorized by a licensed physician and with written daily request of the parent or guardian; [~~and~~]

(5) Administer nonprescription medication to a child only with written daily request of parent or guardian; and [~~.~~]

(6) The provider shall maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect as governed by KRS Chapter 620.

Section 8. Transportation. To assure the safety of children if transportation is provided or arranged by the provider, the provider shall:

(1) Have written permission from a parent or guardian to transport his child;

(2) Have a car or van equipped with seat belts which allow**[~~s~~]** each child to be individually secured;

(3) Require that each child shall have a seat, be individually seat-belted and remain seated while the vehicle is in motion. A child under four (4) years of age or under forty (40) inches in height shall be transported restrained in **a federally-** **[~~an~~]** approved **motor vehicle** safety seat in good repair;

(4) Have a valid driver's license issued by the Division of Motor Vehicles;

(5) Have emergency and identification information about each child in the vehicle whenever children are being transported; and

(6) Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, [~~138.655, and~~] 186.020 and Chapters 189 and 189A.

(7) Never leave children in a vehicle unattended by an adult.

(8) Never use the back of pickup trucks to transport children.

Section 9. Child Records. The provider shall not disclose or knowingly permit the use of information concerning the child or family directly or indirectly except to representatives of the Cabinet for Human Resources or as governed by this administrative regulation.

Section 10. The program shall ensure ongoing communication

with a child's parent by:

(1) Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;

(2) Make available a copy of the certification standards to each parent;

(3) Give each parent the name and address and telephone number of the cabinet, to register complaints if he believes the family child care home provider is not meeting the standards; and

(4) Post and provide to each parent copies of children and parent rights pursuant to KRS 199.898 [~~SB 211~~].

Section 11. The provider shall comply with the following:

(1) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.

(2) Wash hands with soap and water before and after diapering a child.

(3) Use sanitary procedures when preparing and serving food.

(4) Assure that children shall not share cups, eating utensils, wash cloths or towels.

(5) The provider or other persons in the home shall not be under the influence of alcohol or drugs while children are in care except those drugs prescribed by a physician.

(6) Prohibit smoking in the presence of children in care.

(7) The provider or other person in the home shall not use physical punishment:

(a) A child shall not be:

1. Handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking and spanking; or

2. Placed in a locked room, closet, box or other confined space;

(b) The provider or other person in the home shall not:

1. Use disciplinary methods which humiliate, shame or frighten the child; or

2. Use harsh or demeaning language in the presence of the children;

(c) Discipline shall not be:

1. Delegated to another child; or

2. Related to food, rest or toileting:

a. Food shall not be withheld or given as a means of discipline;

b. A child shall not be disciplined for lapses in toilet training; or

c. A child shall not be disciplined for not sleeping during rest time.

(8) In the absence of the provider, a substitute provider shall be physically present at the family child care home during hours of operation. The provider shall not be employed outside the home during regular hours of operation. Children are not permitted off the premises without the caregiver. An exception may be made for school-age children, as long as their whereabouts are known, and the parents have given written permission.

(9) An infant's formula shall be prepared and provided by the parent. An exception may be made for providers that provide formula as a fringe benefit to the parent.

(10) Infants in care shall be held during feeding and bottles shall never be propped.

(11) If overnight care is provided, the provider shall:

(a) Remain awake until every child in care is asleep;

(b) Sleep on the same level as infants and toddlers; and

(c) Provide comfortable, clean and safe bedding for each child.

(12) Serve meals which include a food from each of the four (4) basic food groups and snacks appropriate in amount and type of foods served for the ages of the children in care.

(13) Provide opportunities for outdoor play or fresh air.

(14) Be able to recognize symptoms of childhood illnesses.

(15) Visually supervise children who are awake and be able to respond to the children immediately.

(16) Be able to provide basic first aid.

(17) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes.

Section 12. Incorporation by Reference. (1) Forms necessary for the implementation of the certification of family child care homes shall be herein incorporated by reference.

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

Section 13. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 2, 1993
FILED WITH LRC: August 6, 1993 at 11 a.m.

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

905 KAR 2:110. Child care facility provider requirements.

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish provider requirements for child day care facilities.

Section 1. General. (1) The licensee shall be responsible for the operation of the facility in accordance with 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(2) Staff shall be instructed in the requirements for operation and a copy of the minimum standards shall be available for their use.

(3) Information concerning children, their parents, relatives, or guardians shall be kept in strict confidence by the staff, except as otherwise required by law.

(4) Volunteers shall comply with the policies and procedures of the facility.

(5) Program policies and procedures shall be in writing and shall include personnel policies, job descriptions, organization charts, chain of command, and other procedures pertaining to the operation of the facility.

(6) Activities of persons living in a facility that is the dwelling unit shall not interfere with the day care program.

(7) Good personal hygiene shall be practiced by persons in the facility.

(a) Caregivers shall wash hands with soap and warm running water after diapering or toileting each child.

(b) Caregivers shall wash hands with soap and running water immediately before feeding children.

(8) **Caregivers shall provide adequate supervision of children while in the care of the facility.**

(9) The services to be provided within the facility shall be clearly stated when the application is made. A written statement of services and policies shall be given to parents.

(10) [~~(9)~~] Parents or persons exercising custodial control of a child shall be permitted to visit the facility during regular hours of operation.

(11) [~~(10)~~] The director [~~or provider~~] shall be responsible for the following:

(a) Development of a child care program which meets the

requirements of this administrative regulation and 905 KAR 2:090, 905 KAR 2:120 and 905 KAR 2:130;

(b) Development of facility plans, policies and procedures;

(c) Supervision of personnel and their conduct at the facility, carrying out of personnel policies, scheduling daily activities, and management of staff meetings;

(d) Evaluation of the instructional activities of staff;

(e) Assurance that additional staff is available during cooking or cleaning hours if necessary to maintain **staff child ratios as governed by 905 KAR 2:120, Section 1** [~~regulated supervision of the children~~]; and

(f) Provision for health, safety and comfort of children.

Section 2. Records. (1) The following records shall be maintained at the facility for five (5) years:

(a) Sufficient records to identify the individual children and to enable the person in charge to communicate with the parents or persons designated as being responsible for the child either at their home or place of employment, and in a medical emergency, with the family physician;

(b) Each child's medical history, along with authorization for emergency medical care, signed by the parent or guardian and left with the facility director at enrollment;

(c) Except as provided in KRS 214.036, a current immunization certificate showing that the child is immunized in accordance with 902 KAR 2:060 shall be on file within thirty (30) days of admission;

(d) Permission forms for trips off the premises signed by the parent or guardian;

(e) Daily attendance records of children;

(f) For each employee, a copy of the results of a negative tuberculin skin test or chest x-ray prior to employment and every two (2) years thereafter;

(g) A written schedule of staff working hours;

(h) A written record of staff training;

(i) A written plan for staff development;

(j) A written record of quarterly fire, earthquake and tornado drills;

(k) A written plan or diagram outlining the course of action in the event of natural or manmade disaster posted in a prominent place;

(l) Each facility shall obtain a criminal records check directly from the Justice Cabinet prior to initial employment of staff with supervisory or disciplinary authority over a minor, including cooks, bus drivers, substitutes and volunteers. If the volunteer does not replace staff, is never alone with children, and has no supervising responsibility, he shall not be considered a volunteer for the purpose of criminal records check;

(m) A written record of reports to the cabinet required in Section 4(1) of this administrative regulation; and

(n) The facility shall post the following **in a conspicuous place to be available** for public inspection [~~in the director's office or lobby~~]:

1. A copy of the statement of deficiencies reports the facility has received from the cabinet and the plans of correction for the **licensure** [~~calendar~~] year and permit interested parties to inspect facility files relating to deficiency statements and plans of correction;

2. A description of the services currently provided by the facility;

3. A listing of the rates currently charged for services provided by the facility;

4. A listing together with the charges for the services and items not included in the basic rate for which parents may be charged separately;

5. A copy of each court order pertaining to the quality of care or services provided in the facility; and

6. A copy of children and parental rights pursuant to KRS 199.898.

(2) Subsection (1) of this section shall not be construed to limit access to public records otherwise allowed pursuant to the provisions of KRS 61.872 to 61.884.

Section 3. Staff Requirements. (1) A director of a Type I facility providing child care shall:

(a) Be twenty-one (21) years of age;

(b) Have a high school diploma or a General Equivalency Diploma (GED);

(c) Not be employed in a position other than a child care director during the hours the day care facility is in operation; and

(d) [~~(c)~~] Meet one (1) of the following requirements:

1. Master's degree in Early Childhood Education and Development;

2. Bachelor's degree in Early Childhood Education and Development;

3. Master's degree or a bachelor's degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training;

4. Associate degree in Early Childhood Education and Development;

5. Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, plus two (2) years of verifiable full-time paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child **day** care;

6. Child development associate (CDA) plus one (1) year of verifiable paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child **day** care;

7. Diploma in Child Development Services from Kentucky Tech (Dictionary of occupational title: Director: preschool; Teacher: preschool); or

8. Three (3) years of verifiable full-time paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child **day** care;

(2) A director of a Type II facility providing child care shall:

(a) Meet the requirements for a Type I facility; or

(b) Be twenty-one (21) years of age;

(c) Have a high school diploma or GED;

(d) Have twelve (12) hours of orientation and child development training; [~~and~~]

(e) **Not be employed in a position other than a child care director during the hours the day care facility is in operation; and**

(f) Meet one (1) of the following requirements:

1. Certificate in child development services from Kentucky Tech **or local school system** (Dictionary of occupational title, child care assistant);

2. One (1) year of verifiable paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child **day** care; **or**

3. Obtain six (6) additional hours of training in child day care program administration.

(3) A director of a licensed facility providing child day care on the effective date of this administrative regulation shall be deemed to have met the qualifications under subsections (1) **and (2)** of this section.

(4) The following staff requirements shall apply to a facility:

(a) A facility shall not employ a person convicted of an act involving the abuse, neglect or exploitation of a child as specified in

905 KAR 2:090, Section 6(2);

(b) A staff person shall be on duty who is **currently** ~~[annually]~~ certified in: ~~[cardiopulmonary resuscitation (CPR), and currently trained in first aid by a certified instructor approved by the cabinet.]~~

1. Infant and child cardiopulmonary resuscitation (CPR) by:
a. The American Red Cross;
b. The American Safety Council; or
c. The American Heart Association; and
2. Infant and child first aid by:
a. The American Red Cross; or
b. The American Safety Council.
3. The effective date of this subsection shall be July 1, 1994. However, the effective date of this subsection may be revised by administrative regulation to a date prior to July 1, 1994, contingent upon accessibility of training in all areas of the Commonwealth.

4. This training shall be in addition to the twelve (12) clock hours requirement in subsections (1) and (2) of this section;

(c) One (1) adult shall be designated as being in charge. If the director is not present in the facility, the adult left in charge shall carry out the duties of the director;

(d) A minimum of two (2) qualified substitutes shall be available in case of need;

(e) The minimum of adult workers in a facility shall be sufficient to ensure that minors under eighteen (18) years of age and student trainees are under direct supervision. A person under the age of sixteen (16) shall not be counted as staff for the staff to child ratio;

(f) Controlled substances or alcohol use shall not be permitted on the premises during hours of operation;

(g) Smoking shall be permitted only in designated areas away from the children;

(h) Staff members shall remain awake while on duty except as specified in 905 KAR 2:120, Section 1(5)(f); and

(i) Require for a facility that is the full-time residence of the licensee that adults living in the home have on file at the facility:

1. Criminal records check; and

2. Tuberculosis skin test or, if positive, results of a chest x-ray.

(5) ~~[(4)]~~ Twelve (12) clock hours of orientation and child development training during the first year and twelve (12) clock hours of annual training thereafter shall be required and shall be documented in writing by the trainer.

Section 4. Reports Made to the Cabinet for Human Resources. (1) The following shall be reported within twenty-four (24) hours:

(a) Communicable disease to the local health department in accordance with KRS 214.010;

(b) An accident or injury requiring extensive medical care, hospitalization, or **result in** death;

(c) An incident that results in legal action by or against the facility which affects a child or personnel; and

(d) An incident involving fire or other emergency.

(2) An incident of child abuse, neglect or dependency shall be reported as specified in KRS Chapter 620.

(3) A change of director shall be reported within one (1) week.

(4) Notification of the following shall be made to the cabinet to allow for approval before implementation:

(a) Change of ownership ~~[or sponsorship or major stockholder in corporation]~~;

(b) Change of location;

(c) Increase in capacity;

(d) **Change in** hours of operation; and

(e) Change of services in the following categories:

1. Infant;
2. Toddler;
3. Two (2) years to school-age;
4. School-age;
5. Nighttime care; and
6. Transportation.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 2, 1993
FILED WITH LRC: August 6, 1993 at 11 a.m.

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

905 KAR 2:120. Child care facility health and safety standards.

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish requirements for health and safety standards for child day care facilities.

Section 1. Child Care Services. (1) Minimum staff-child ratios and group size for an operating facility shall be maintained as follows:

Age of Children	Ratio	Maximum Group Size*
Birth - 1 year	1 staff for 6 children	12
	(1 staff for 5 children	10)**
1 to 2 years	1 staff for 6 children	12
2 to 3 years	1 staff for 10 children	20
3 to 4 years	1 staff for 12 children	24
4 to 5 years	1 staff for 14 children	28
5 to 7 years	1 staff for 15 children	30
7 and older	1 staff for 25 children (for before and after school)	30
	1 staff for 20 children (for full day of care)	30

* Maximum Group Size is applicable only to Type I facilities **and shall become effective July 1, 1994**.

** This provision shall become effective July 1, 1994. However, the effective date may be revised by administrative regulation to January 1, 1994, or to a date prior to July 1994, contingent upon the availability of additional federal funds for subsidized child care.

(a) In a Type I facility a group shall be separately maintained in a defined area unique to the group with specific staff assigned to and responsible for the group.

(b) The age of the youngest child in the group shall determine the staff-child ratio and maximum group size, if applicable.

(c) **This subsection and subsection (4)(a) of this section shall not apply during normal school hours to a facility providing early childhood education to mixed-age groups of children ranging in age from two and one-half (2 1/2) to six (6) years that is accredited by a nationally recognized educational association which has accreditation criteria for group size and child staff ratios contrary to this subsection.**

(d) If the director's **and employees'** own or related ~~[preschool]~~ children ~~[or preschool children of day care staff]~~ receive care in the facility, they shall be included in the staff-child ratio.

(2) Each facility shall maintain a child care program which assures **that children have adequate supervision and that** affirmative steps are taken to protect children from abuse or neglect while the children are under the supervision of employees of the facility.

The program shall include procedures to inform facility employees of the laws of the Commonwealth pertaining to child abuse or neglect as specified under KRS Chapter 620.

(3) The facility shall provide a planned program of activities geared to the individual needs and developmental levels of the children served. These activities shall provide experiences which promote the individual child's physical, emotional, social and intellectual growth and well-being. The daily program shall be under adult supervision and provide:

(a) A variety of creative activities which may include the following:

1. Art;
2. Music;
3. Dramatic play;
4. Stories and books;
5. Science;
6. Block building; and
7. Tactile activities.

(b) Indoor or outdoor play in which the children make use of both small and large muscles.

(c) A balance of active and quiet play, including group and individual activities, both indoors and outdoors.

(d) Opportunities for a child to have some free choice of activities and to play apart from the group at times, if the child desires.

(e) Opportunities to practice self-help procedures in respect to clothing, toileting, handwashing, and feeding.

(f) Activity areas, equipment, and materials so arranged that the child's activities are visible to the supervising staff.

(g) Regularity of routines to afford the child the security of knowing what is coming next.

(h) Sufficient time for activities and routines so that children can progress at their own developmental rate.

(i) No long waiting periods between activities or prolonged periods during which children stand or sit.

(j) Television viewing by children shall be limited to program related areas.

(4) If school-age care is provided:

(a) A separate area or room shall be provided in a Type I facility.

(b) A child shall be provided a snack after school.

(c) Separate toilet facilities shall be provided for males and females, or a plan implemented to use the same facilities at separate times.

(5) If nighttime care is provided:

(a) A child shall not be permitted to spend more than sixteen (16) hours in the facility during one (1) twenty-four (24) hour period **[**~~or day~~**]**. If school-age children are served, time spent in school shall be included in the sixteen (16) hour**[**~~s~~**]** limit.

(b) At least one (1) staff member shall be assigned responsibility **and provide adequate supervision** for each sleeping room.

(c) If children are present for extended periods of time during their waking hours, the facility shall provide a program of well-balanced and constructive activities geared to the age levels and developmental needs of the children served.

(d) Children sleeping three (3) hours or more shall sleep in pajamas or nightgowns.

(e) School children shall be offered breakfast if they go to school from the facility.

(f) Staff shall:

1. In Type I facilities remain awake while on duty.
2. In Type II facilities remain awake until every child in care is asleep.

Section 2. Health needs of the child shall be met as follows:

(1) First aid supplies shall be available to provide prompt and proper first aid treatment and stored out of reach of children. Supplies shall be periodically inventoried to ensure that they are current. Reusable items shall be sanitized and maintained in a sanitary manner. First aid supplies shall include:

(a) Liquid soap;
(b) Adhesive bandages;
(c) Sterile gauze;
(d) Medical tape;
(e) Scissors;
(f) Tweezers;
(g) Thermometers;
(h) Flashlight;
(i) Cold pack;
(j) First aid book;
(k) Disposable latex gloves**[**~~; and~~

~~(l) Ipecac syrup (to be given under direction of a licensed physician or the poison control center)~~**]**.

(2) A child showing signs of an illness that may be communicable to others in a day care setting shall not be admitted to the regular child care program. If a child becomes ill during the day, he shall be placed in a supervised area isolated from the rest of the children, the parent or designated person shall be contacted immediately and arrangements shall be made to remove the child from the facility.

(3) Prescription medications **or aspirin** shall not be given to a child except as authorized by a licensed physician and with written daily request of the parent or guardian.

(a) The facility shall keep a written record of the administration of each medication, including time, date, amount and staff giving the medication.

(b) Medication shall be stored in a separate (locked) place out of the reach of children and shall be in the original bottle and properly labeled.

(c) Medication shall not be given to a child if the expiration date on the bottle has passed.

(4) Nonprescription medication **may** **[**~~shall~~**]** be given to a child only with written daily request of parent or guardian.

(5) Each child shall be helped with personal care and cleanliness.

(6) Children shall not return from the toilet to activities without first washing hands. A child shall wash his hands with soap and warm, running water prior to eating and after toileting.

(7) Staff shall insure that diapering and toilet training shall be a relaxed, pleasant activity. Toilet training shall be coordinated with parent or guardian.

(8) Adequate quantities of freshly laundered or disposable diapers and clean clothing shall be available.

(9) Soiled diapers or wet clothing shall be changed promptly and stored in covered containers temporarily and shall be washed or disposed of at least once a day.

(10) When a child is diapered, the child shall be placed on a clean washable surface or disposable covering. Individual washcloths and towels or disposable towels shall be used to thoroughly clean and dry the child's buttocks unless otherwise prescribed by a physician. If staff wear disposable plastic gloves, gloves shall be changed and disposed of after each child is diapered. After diapering, staff shall wash their hands and disinfect the surface before diapering another child.

(11) If training chairs are used, they shall be emptied promptly and sanitized after each use.

(12) The infant's formula shall be prepared and provided by the parent. An exception may be made for a facility that participates in the child care food program, or provides formula as a fringe benefit to the parent.

(13) Bottles shall be individually labeled and promptly refrigerated.

(14) A child shall not be fed with a propped bottle.

(15) A child shall have rest periods not to exceed two (2) hours except for infants and toddlers, and time periods during nighttime care and extended hours. A child who does not sleep shall be permitted to play quietly after a reasonable rest period.

(16) Drinking water shall be freely available to a child and an individual drinking cup provided if no fountain is provided.

(17) Toilet articles like combs, **towels or washcloths,** brushes

and toothbrushes used by a child shall be individual and plainly marked.

(18) The facility shall provide and serve nutritious snacks and meals.

(a) A child present at meal or snack times shall be served.

(b) The facility shall provide and serve breakfast or a midmorning snack, lunch, and a midafternoon snack and dinner, if appropriate.

(c) There shall be at least a two (2) hour lapse, but no longer than three (3) hours, between meals or snacks.

(d) Food prepared shall be in quantities reflecting the developmental stage of the child.

(e) Food requirements shall be as follows:

1. Breakfast shall include milk, bread, and fruit or vegetable or juice;

2. Snacks shall include two (2) of the following: milk, protein, fruit or vegetable or juice, or bread; and

3. Lunch and dinner shall include milk, protein, two (2) vegetables or a fruit and one (1) vegetable, and bread.

(f) If parents choose to provide food for their own child's meal or snack, or if food is catered, and the food does not meet the nutritional requirements listed, the facility shall provide additional food necessary to meet these requirements.

(g) A child shall be seated at eating time with sufficient room to manage food and tableware. Adults shall be present with children during eating times.

(h) Individual eating utensils shall be of size and design that a child can handle easily.

(i) Weekly menus shall be prepared, dated and posted in advance in a conspicuous place. Menus shall be kept on file **for thirty (30) days**. Substitutions shall be noted on the menu.

Section 3. Health and Sanitation. **A facility required to have a food service permit shall be in compliance with 902 KAR 45:005, Food service code.** If the facility does not have a current food service permit issued under the authority of the Department for Health Services, as governed by 902 KAR 45:005, Food Service Code, it shall be in compliance with the requirements of this section.

(1) A facility that serves a meal shall have a three (3) compartment sink or other equipment, and procedures approved by the cabinet, for the purpose of washing and sanitizing dishes, silverware, eating and cooking utensils after use.

(2) Food supplies and protection are to be maintained as follows:

(a) Food shall be clean, free from spoilage, free from adulteration and misbranding and safe for human consumption. Hermetically sealed, nonacidic and low-acidic food which has been processed in a place other than a commercial food-processing establishment shall not be used. Food served shall be from a source which is in compliance with applicable state and local laws and administrative regulations. Established commercial food stores are an acceptable source.

(b) Food, while being stored, prepared, displayed or served shall be protected against contamination from dust, flies, rodents and other vermin, unclean utensils and work surfaces, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage.

(c) Potentially hazardous food shall, except when being prepared and served, be kept in a safe environment for preservation. The temperature for potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, except during necessary periods of preparation and service.

(d) Frozen food shall be kept at a temperature of zero degrees Fahrenheit or below so as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures or under cool, potable running water, quick thawed as part of the cooking process, or by another method satisfactory to the health authority.

(e) Each cold-storage facility used for storage of perishable food in a nonfrozen state shall have an indicating thermometer or other appropriate temperature measuring device.

(f) Convenient and suitable sanitized utensils shall be provided and used to minimize handling of food where food is prepared.

(g) Poultry, pork and their products which have not been treated to destroy bacteria, including trichinae, shall be thoroughly cooked. Fruits and vegetables shall be washed before cooking or serving.

(h) Meat salads, poultry salads, and cream filled pastries shall be prepared with utensils which are clean and shall, unless served immediately, be refrigerated pending service.

(i) Food shall be stored in clean racks, shelves or other clean surfaces. Food in nonabsorbent containers may be stored on the floor if it is maintained in an acceptable sanitary condition.

(j) Individual portions of food served to a child shall not be served again. Wrapped food, which is still wholesome and has not been unwrapped, may be reserved.

(k) Poisonous and toxic materials shall be properly identified and stored in cabinets which are used for no other purpose, or stored in a place outside food storage, food preparation, and utensil storage areas.

(3) Health and disease controls shall be in place as follows:

(a) If a person **[~~who has job duties is known or~~]** is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job duties, the individual shall not perform these duties until **[~~such time as~~]** the infectious condition can no longer be reasonably expected to be transmitted. Disagreement regarding this requirement between the provider and the individual involved shall be resolved by the individual's physician or the local health department.

(b) An employee shall maintain personal cleanliness and conform to hygienic practices while on duty. Hands shall be washed thoroughly before starting work, and as often as may be necessary to remove soil and contamination. An employee shall not resume work after visiting the toilet room without first washing his hands.

(c) A facility shall have lavatories located in or immediately adjacent to toilet rooms.

(d) Food contact surfaces of equipment and utensils used in a facility shall be smooth, free of breaks, open seams, cracks, chips, be accessible for cleaning, and nontoxic.

(e) Eating and drinking utensils shall be cleaned for each usage. Kitchenware, food contact surfaces of equipment, exclusive of cooking surfaces of equipment, and food storage utensils used in preparation or serving of food or drink shall be cleaned after each use. Cooking surfaces of equipment shall be kept clean. Nonfood contact surfaces of equipment shall be cleaned to keep them in a clean and sanitary condition. Single-service articles shall be stored, handled, and dispensed in a sanitary manner, and be used only once.

(f) Effective control measures shall be utilized to minimize the presence of rodents, flies, roaches, and other vermin on the premises.

(g) Openings to the outer air shall be effectively protected against the entrance of the insects by self-closing doors, closed windows, screening, controlled air current, or other effective means.

(h) Floors, walls and ceilings shall be smooth and constructed to be easily cleanable. Walls, windows and ceilings shall be kept clean and in good repair.

(i) Kitchens shall be adequately ventilated to the outside air.

(j) The water supply shall be properly located, protected, adequate, and of a source approved by the local health department. Groundwater supplies for facilities caring for more than twenty-five (25) children shall meet the specifications of the Cabinet for Natural Resources and Environmental Protection. Facilities caring for twenty-five (25) children or less may secure approval from the local health department.

(k) Sewage and solid waste shall be properly disposed of and solid waste shall be kept in suitable receptacles in accordance with local, county and state laws as governed by KRS 211.350 to 211.380. Sewage shall be disposed of by a method approved by the Cabinet for Natural Resources and Environmental Protection or the Cabinet

for Human Resources. Consultation shall be sought from the Cabinet for Natural Resources and Environmental Protection or the local sanitarian having jurisdiction over a facility in which the adequacy of the plumbing is questioned.

(l) Each facility shall be provided with adequate and conveniently located toilet and handwashing accommodations.

1. Each toilet shall be kept in clean condition, kept in good repair, be lighted and have ventilation to outside air.

2. A supply of toilet paper shall be available.

3. Lavatories shall have hot and cold running water under pressure which allows washing of hands under warm water.

4. Water temperature at lavatories used for hand washing shall not exceed 110 degrees Fahrenheit.

5. Soap and approved individual cloth or paper towels shall be provided.

6. Easily cleanable, covered waste receptacles shall be available in toilet and handwashing areas.

Section 4. Transportation. (1) There shall be documentation available to indicate conformance to federal and state laws pertaining to vehicles, drivers and insurance as governed by KRS 281.600, 186.020 and Chapters 189 and 189A.

(2) A facility providing or arranging transportation service shall have a written plan and statement of transportation policies and procedures.

(3) Transportation provided by licensed public transportation or school bus shall meet Transportation Cabinet safety inspection requirements.

(4) Requirements for facility-owned vehicles and their usage:

(a) Twelve (12) or more passenger vans and buses shall display a current certification of inspection from the Transportation Cabinet on the designated window.

(b) A vehicle used to transport children, and requiring traffic to stop while loading and unloading children at their various homes along public roads, shall be equipped with a system of signal lamps, identifying colors and words.

(c) A car or van shall be equipped with seat belts for each child to be individually secured.

(d) A vehicle used to transport children shall not carry hazardous materials aboard.

(5) The staff-child ratios set forth in Section 1(1) of this administrative regulation shall apply if not inconsistent under special requirements or exceptions in this section. The maximum number of children under the age of five (5) a driver shall supervise alone is four (4).

(6) Each child shall have a seat**, individually seat-belted** and remain seated while the vehicle is in motion. A child under four (4) years of age or under forty (40) inches in height shall be transported restrained in an approved safety seat.

(7) A vehicle containing children shall not be left unattended.

(8) A child shall not be left unattended at the site of aftercare delivery.

(a) If the parent, or a person designated by the parent to accept the child, is not present upon delivery of the child, a prearranged written plan known to the parties shall designate where the child can be picked up.

(b) If a person other than the designated person is to receive the child, arrangements shall be made by the parent or guardian and documented.

(c) A child shall not be picked up at or delivered to a location which requires crossing the street or highway unless accompanied by an adult.

(9) A vehicle transporting children shall have the headlamps on.

(10) A vehicle shall be refueled when not being used to transport children. If emergency refueling or repair is necessary during transporting, children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(11) The engine shall be turned off, keys removed, and brake set if the driver is not in the driver's seat.

Section 5. Physical Facilities. (1) The building shall be suitable for the purpose intended.

(a) There shall be a minimum of thirty-five (35) square feet of space per child used for play, exclusive of the kitchen, bathroom**s**, hallways, and storage areas. It shall be kept clean and in good repair.

(b) If a portion of the building is used for purposes other than day care, necessary provisions shall be made to avoid interference with the day care program.

(c) The building shall be so constructed that it is dry, adequately heated, ventilated, lighted; that windows, doors, stoves, heaters, furnaces, pipes, and stairs are protected; that screening is provided on windows and doors which are left open.

(d) There shall be a minimum of one (1) toilet and wash basin for each twenty (20) children. In boys' bathrooms urinals may be substituted for up to one-half (1/2) of the number of toilets required. Toilet facilities shall be cleaned and sanitized daily.

(e) The kitchen shall be clean and equipped for the proper preservation, storage, preparation, and serving of food. The kitchen shall not be used for activities of the children.

(f) The facility shall be equipped with a telephone accessible to the rooms used by the children.

(g) If the only food served by the facility is an afternoon snack for the school-age children, a kitchen shall not be required if adequate refrigeration is available.

(h) Indoor areas for infants and toddlers shall be provided separated from areas used by older children. The infants and toddlers may participate in activities with older children for short periods of time.

(i) There shall be adequate crawling space for infants and toddlers protected from older children and away from general traffic patterns of the facility.

(j) A facility shall have lavatories in or immediately adjacent to changing areas used for infants and toddlers.

(k) If a facility provides an outdoor play area for infants and toddlers, the outdoor area shall be shaded and out of the traffic pattern of older children.

(l) The Department of Housing, Buildings and Construction and the State Fire Marshal's Office shall be contacted concerning planned new buildings, additions, or major renovations prior to construction.

(2) Grounds shall be provided as follows:

(a) On-site outdoor play areas shall be fenced for the safety of the children. Outdoor play areas shall be a minimum of sixty (60) square feet per child using the area, separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section. The area shall be free from litter, glass, rubbish, and flammable materials. The outdoor area shall be safe and drained; or

(b) If a facility does not have access to an outdoor play area, an indoor space shall be used as a play area and have a minimum of sixty (60) square feet per child using the area, separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section, and include gross motor equipment and be well-ventilated and heated.

(3) Equipment needed within the facility shall be as follows:

(a) Equipment and furnishings shall be clean and in good repair. There shall be safe play equipment, both indoors and outdoors, to meet the physical and other developmental needs and interests of children of different age groups.

(b) Each facility shall have enough toys, play apparatus, and age-appropriate developmental materials to provide each child with a variety of activities during the day as specified in Section 1 of this administrative regulation. Toys shall be too large to swallow, durable, and without sharp points or edges.

(c) Tables and chairs shall be of suitable size for children.

(d) There shall be storage space in the form of low open shelves accessible to the children.

(e) Individual space for each child's clothing shall be provided.

(f) An individual cot, crib, baby bed or two (2) inch thick mat shall be provided for each child in attendance for more than three and one-half (3 1/2) hours per day. Cribs shall have a firm, comfortable waterproof mattress. For sanitary reasons, individual sheets and covers shall be provided for each child and shall be laundered as needed. If mats are used, floors shall be free from drafts and dampness. Cots and other equipment and furnishings shall be properly spaced so as to allow free and safe movement by children and adults.

(g) Tiered cribs shall not be used.

(h) Supplies shall be stored so that the adult can reach them without leaving the child unattended.

(i) Chairs shall be provided for staff to use when feeding, holding or playing with children.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 2, 1993
FILED WITH LRC: August 6, 1993 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED BY NOON, AUGUST 15, 1993

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:100. Leave regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.1976, 344.030, PL 103-3

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110, 18A.155, 344.030, PL 103-3

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. The Family and Medical Leave Act of 1993 (PL 103-3) as implemented by 29 CFR Part 825 requires the granting of family leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Annual Leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, and each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

A full-time employee must have worked more than half of the workdays in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year, or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(10) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in paragraph (2) of this section, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency. The effective date of the separation shall be the last workday.

(11) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the

appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 2(2) of this regulation.

(12) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant or require the use of accrued sick leave with pay when an employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform the essential functions of his[~~/her~~] duties with or without reasonable accommodation. When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. It shall be the responsibility of the employee to advise the appointing authority of accommodations that may be necessary and to provide supporting medical evidence. [~~; if there is no such position available, the regulations pertaining to layoff apply.~~] An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority only if the appointing authority has been unable to place the employee in a vacant, budgeted position, with the same agency, for which the employee qualifies. The employee shall be given priority consideration for such vacant position, if he is capable of performing its essential functions with or without reasonable accommodation. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee in within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

(10) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon appointment and placed to their credit.

(12) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that Workers Compensation Benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Family Leave. (1) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family leave without pay. On the first day of January of each year thereafter every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding calendar year shall qualify for twelve (12) weeks of family leave without pay. Unused family leave shall not be carried over from year to year.

(2)(a) A week of family leave is the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family leave shall be used for calculating the employee's normal work week.

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family leave), the hours worked under the new schedule shall be used for calculating the employee's normal work week.

(3) An appointing authority shall grant family leave, upon the receipt of a completed application from an employee. The appointing authority shall require the employee to utilize accumulated sick, annual and compensatory leave prior to granting unpaid family leave, provided that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family leave shall be reduced by the amount of paid leave used. A completed application means the request form and the medical certification required by subsection (4) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable. Family leave shall be granted:

(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child under an agreement with an agency of the Commonwealth or other state government. An appointing authority may require a couple in the employ of an agency to limit the total amount of family leave to twelve (12) weeks where leave is sought in connection with the birth, adoption or placement of a child;

(b) Within one (1) year of the birth of a child of the employee, adoption by the employee or placement with the employee of a foster child, for the care of such newborn, adopted, or foster child;

(c) To an employee to care for the employee's spouse, parent, child (including biological, adopted, step, or foster), or other family member of similarly close blood or legal relationship (who has resided with the employee for not less than thirty (30) days prior to application), if the spouse, child, parent or family member has a serious health condition. A child includes one who is over eighteen (18) years of age and who is incapable of self-care because of a mental or physical disability. A serious health condition is a condition which requires inpatient care or continuing treatment by a health provider which renders the employee incapable of performing the duties of the employee's position. Where inpatient care is not involved, the expected absence from work, or from school, or incapacity in performing other daily activities of a family member shall be for a period of more than three (3) days.

(d) An appointing authority shall grant family leave because of a serious health condition, of the employee, that makes the employee temporarily unable to perform the essential functions of his position.

(4)(a) The appointing authority shall require an employee granted family leave for a serious health condition to supply a certification, on a form prescribed by the commissioner, from a health care provider that includes a statement that the employee is needed to care for a family member, or, that the employee's presence would be beneficial to the family member. An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or family member shall be required to supply a certification from a licensed health care provider that such leave is medically necessary and the expected duration and schedule of such leave. A "health care provider" includes: doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, and nurse midwife, or certified Christian Science practitioner.

(b) If an employee submits a complete certification signed by the health care provider, the appointing authority shall not request additional information from the employee's health care provider. If the appointing authority has reason to doubt the validity of a medical certification the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(c) If the opinions of the employee's and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider. An appointing authority may require recertification of the need for family leave every thirty (30) working days.

(5) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill family member or for the employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

(6) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave or shall have been on family leave during the previous month subject to the following conditions:

(a) Any combination of work days and paid leave and family leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively;

(c) When an employee is unable to work, and elects to use family leave as the sole qualification for the state contributions for life insurance and health benefits, he shall utilize his family leave days consecutively.

(d) An employee who has exhausted paid leave and family leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(e) An employee who uses family leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family leave is exhausted, shall reimburse the Commonwealth for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the Commonwealth if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family leave under this regulation.

2. Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control are where a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of other circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or a parent's decision not to return to work to stay with a newborn child.

(f) An employee, on family leave, shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(7) At the conclusion of the family leave, an employee shall be restored to the same job that the employee held before going on leave. The employee shall be returned to the same shift or equivalent schedule. If special qualifications are required for a position and said qualifications have lapsed during the employee's leave, the employee may be reassigned to different duties and given a reasonable opportunity to fulfill the requirements after returning to work.

Section 4. Sick Leave Sharing Procedures. (1) Definitions.

(a) "Employee" means an employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.

(b) "Immediate family" means the spouse, mother, father, son or daughter, or person of similarly close blood or legal relationship who has resided with the employee for not less than thirty (30) days prior to application.

(c) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee completely incapable of performing the essential duties of his job. The ten (10) consecutive days of leave required for eligibility may be leave with or without pay. Sick leave sharing shall not be authorized for mere convenience or employee preference.

(2) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(3) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(4) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.

(5) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(6) Donated sick leave shall be used on consecutive days except as provided by subsection (7) of this section. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(7) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors, on a pro rata basis unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(8) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, such leave shall not be available for use by the recipient.

(9) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(10) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

Section 5. [~~3.~~] Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding [~~plaintiff~~]. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 6. [~~4.~~] Compensatory Leave. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of the Fair Labor Standards Act. An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3)

years of employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off when practicable. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "nonexempt" shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 7. [~~5.~~] Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 8. [~~6.~~] Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 9. [~~7.~~] Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

Section 10. [~~8.~~] Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

LOWELL W. CLARK, Commissioner
BRERETON C. JONES, Governor

APPROVED BY AGENCY: August 3, 1993
FILED WITH LRC: August 3, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1993 at 10:30 a.m. in Room 392, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 24, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 204, Frankfort, Kentucky 40601, (502) 564-

4460.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: All appointing authorities and employees in the Executive department subject to KRS 18A.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Availability of family leave is included in the regulations. The Department of Personnel has developed a form to be used in conjunction with the family leave.

(2) Effects on the promulgating administrative body: The Department of Personnel shall maintain records on use of and availability of family leave.

(a) Direct and indirect costs or savings: Each employee shall have 12 weeks of unpaid family leave each calendar year.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Agencies shall report use of family leave to Department.

(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: No

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes. The qualifying waiting period for family leave is identical to that provided for by PL 103-3, §101(2)(A)(ii).

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 FR 9209, March 4, 1983). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2§CER Par 825).

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
(Proposed Amendment)

101 KAR 3:010. Leave regulations for unclassified service.

RELATES TO: KRS 18A.155

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.155, 18A.197

NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for the unclassified service persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. In practice, the leave regulations (101 KAR 2:100) which apply to merit system employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

Section 1. Annual leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, or each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

A full-time employee must have worked more than half of the workdays in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing

months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year, or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month. [~~except:~~

~~(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work-related injury covered by workers compensation.~~

~~(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.~~]

(10) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 1(2) of this regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated annual leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency. The effective date of the separation shall be the last workday.

(11) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 1(2) of this regulation.

(12) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except an emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of

the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when the employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority may return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month. [~~except:~~

~~(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work-related injury covered by workers compensation.~~

~~(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.~~]

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

(10) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon appointment and placed to their credit.

(12) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that Workers' Compensation Benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Family Leave. It shall be the responsibility of the appointing authority to administer family leave in compliance with the Federal Family and Medical Leave Act of 1993 and regulations promulgated thereunder found in 29 CFR Part 825. Each employee in a nonexempt, nonpolicy making position shall be entitled to family leave as set out in 101 KAR 2:100, Section 3.

Section 4. Sick Leave Sharing Procedures. (1) Definitions.

(a) "Employee" means an employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.

(b) "Immediate family" means the spouse, mother, father, son or daughter, or person of similarly close blood or legal relationship who has resided with the employee for not less than thirty (30) days prior to application.

(c) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee completely incapable of performing the essential duties of his job. The ten (10) consecutive days of leave required for eligibility may be leave with or without pay. Sick leave sharing shall not be authorized for mere convenience or employee preference.

(2) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(3) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(4) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.

(5) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(6) Donated sick leave shall be used on consecutive days except as provided by subsection (7) of this section. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(7) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors, on a pro rata basis unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(8) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, such leave shall not be available for use by the recipient.

(9) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(10) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

Section 5. [~~3.~~] Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding [~~plaintiff~~]. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 6. [~~4.~~] Compensatory Leave and Overtime. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of this section and the Fair Labor Standards Act. An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off if the use of such time does not unduly disrupt the operations of the agency. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "nonexempt" shall be paid at one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7)(a) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(b) An employee in a policy making position shall be paid for all accrued compensatory leave, not to exceed 200 hours, only upon termination from the unclassified service. An employee who reverts to a position in the classified service or an employee who resigns one day and is employed the next day shall retain his accrued compensatory leave in the receiving agency.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 7. [~~5.~~] Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 8. [~~6.~~] Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensato-

ry leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 9. [~~7.~~] Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service, or for other purposes that are deemed to be in the best interests of the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month. [~~except:~~

~~(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.~~

~~(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.~~]

Section 10. [~~8.~~] Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

LOWELL W. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: August 3, 1993
FILED WITH LRC: August 3, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1993 at 10:30 a.m. in Room 392, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 24, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 204, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: All appointing authorities and employees in the Executive department subject to KRS 18A.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Availability of family leave is included in the regulations. The Department of Personnel has developed a form to be used in conjunction with the family leave.

(2) Effects on the promulgating administrative body: The Department of Personnel shall maintain records on use of and availability of family leave.

(a) Direct and indirect costs or savings: Each employee shall have 12 weeks of unpaid family leave each calendar year.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Agencies shall report use of family leave to Department.

(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: No

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes. The qualifying waiting period for family leave is identical to that provided for by PL 103-3, §101(2)(A)(ii).

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 FR 9209, March 4, 1983). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2§CER Par 825).

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.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Proposed Amendment)

201 KAR 26:121. Scope of practice.

RELATES TO: KRS 319.032
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: To fulfill the requirement of establishing the scope of practice of psychologists.

Section 1. A licensed psychologist, certified psychologist with autonomous functioning, certified psychologist, or psychological associate shall not practice or present himself outside the area of competency specified in the application and the area approved by the board based upon examination and [~~or~~] review of qualifications, training and experience.

Section 2. (1) A completed application for a change in a licensed or certified area(s) of competency shall be submitted to the board.

(2) The board shall review the applicant's credentials, qualifications and experience.

(3) Upon approval of the completed application by the board, the applicant shall take an examination in the requested area(s).

(4) The applicant shall submit the appropriate fee for the examination.

Section 3. Change from Certified to Licensed Psychologist. (1) If a person has been certified and later completes [~~wishes, on the basis of~~] additional training and education [~~experience~~], to become licensed as a psychologist, a new and complete application for licensure as a psychologist with area of competency requested shall be submitted with an approved application fee.

(2) The board shall accept the applicant's previous examination results for the objective (EPPP) examination if the original test score satisfies the licensure requirement as to criterion level.

(3) The oral portions of the examination shall be successfully completed by the applicant.

Section 4. Scope of Practice - Clinical Psychology. (1) Clinical psychological [~~psychology~~] services refers to description, evaluation, interpretation and modification of human behavior by the application psychological of principles, methods, and procedures for the purpose of preventing, eliminating, or reducing symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health.

(2) [~~understanding, predicting, and alleviating intellectual, emotional, psychological, and behavioral disability and discomfort.~~] Direct services are provided in a variety of health settings including: psychiatric hospitals, general medical hospitals, community mental health centers, clinics, and private offices.

(3) [~~, and~~] Direct and supportive services are provided throughout [~~in~~] the entire range of social, organizational, and academic institutions and agencies.

(4) Clinical psychological services include [~~the following~~]:

(a) Psychological testing and the evaluation or assessment of personal characteristics such as:

1. Intelligence;
2. Personality;
3. Abilities;
4. Interests;
5. Aptitudes; and
6. Neuropsychological functioning;

(b) Psychotherapy;

(c) Counseling;

(d) Psychoanalysis;

(e) Hypnosis;

(f) Biofeedback and behavior analysis and therapy;

(g) Diagnosis and treatment of mental and emotional disorder or disability;

(h) Alcoholism and substance abuse disorders of habit or conduct;

(i) The psychological aspects of:

1. Physical illness;
2. Accident;
3. Injury; or
4. Disability;

(j) Psychoeducational evaluation, therapy, remediation, and consultation.

(k) [(1)] Assessment directed toward diagnosing the nature and causes, and predicting the effects, of subjective distress; of personal, social and work dysfunction; and of the psychological and emotional factors involved in and consequent to, physical disease and disability. Procedures may include[, but are not limited to]: interviewing, and administering and interpreting tests of intellectual abilities, attitudes, emotions, motivations, personality characteristics, psychoneurological status, and other aspects of human experience and behavior relevant to the disturbance;

(l) [(2)] Interventions directed at identifying and correcting the emotional conflicts, personality disturbances, and skill deficits underlying a person's distress [and/]or dysfunction. Interventions may reflect a variety of theoretical orientations, techniques, and modalities. These may include[, but are not limited to]: psychotherapy, psychoanalysis, behavior therapy, marital and family therapy, group psychotherapy, hypnotherapy, social-learning approaches, biofeedback techniques, and environmental consultation and design;

(m) [(3)] Professional consultation in relation to assessment and intervention,

(n) [(4)] Program development services in the areas of assessment, intervention, and consultation; and

(o) [(5)] Supervision of clinical psychological services.

Section 5. Scope of Practice - Counseling Psychology. (1) Counseling psychology refers to services provided by counseling psychologists that apply principles, methods, and procedures for facilitating effective functioning during the life-span developmental process.

(2) In providing these [such] services, counseling psychologists approach practice with a significant emphasis on positive aspects of growth and adjustment and with a developmental orientation.

(3) These services are intended to help persons acquire or alter personal-social skills, improve adaptability to changing life demands, enhance environmental coping skills, and develop a variety of problem-solving and decision-making capabilities.

(4) Counseling psychology services are used by individuals, couples, and families of all age groups to cope with problems connected with education, career choice, work, sex, marriage, family, other social relations, health, aging, and handicaps of a physical or social nature.

(5) The services are offered in such organizations as educational, rehabilitation, and health institutions and in a variety of other public and private agencies.

(6) Counseling psychological services include the following:

(a) [(1)] Assessment, evaluation, and diagnosis;

(b) [(2)] Interventions with individuals and groups;

(c) [(3)] Professional consultation in relation to assessment and intervention;

(d) [(4)] Program development services in the areas of assessment, intervention, and consultation;

(e) [(5)] Supervision of counseling psychological services; and

(f) [(6)] Evaluation of all counseling psychological services.

Section 6. Scope of Practice - School Psychology. School psychology services refers to one (1) or more of the following services offered to clients involved in educational settings, from preschool through higher education, for the protection and promotion of mental health and the facilitation of learning. School psychological services include:

(1) Psychological and psychoeducational evaluation and assessment of the school functioning of children and young persons. Procedures include screening, psychological and educational tests of intellectual functioning, cognitive development, affective behavior, and neuropsychological status, interviews, observation, and behavioral evaluations.

(2) Interventions to facilitate the functioning of individuals or groups, including [but not limited to]: recommending, planning, and evaluating special education services; psychoeducational therapy; counseling; affective educational programs; and training programs to improve coping skills.

(3) Interventions to facilitate the educational services and child care functions of school personnel, parents, and community agencies.

(4) Consultation and collaboration with school personnel [and/]or parents concerning specific school-related problems of students and the professional problems of staff.

(5) Program development services to individual schools, to school administrative systems, and to community agencies.

(6) Supervision of school psychological services.

[Section 7. Scope of Practice - Industrial/Organizational Psychology. Industrial/organizational psychological services involve the development and application of psychological theory and methodology to problems of individuals and groups in organizational settings. The purpose of such applications to the assessment, development, or evaluation of individuals, groups or organizations is to enhance the effectiveness of these individuals, groups, or organizations. Industrial/organizational psychological may include, but are not limited to the following:

(1) Selection and placement of employees.
(2) Organizational development.
(3) Training and development of employees.
(4) Personnel research.
(5) Improving employee motivation.
(6) Design and optimization of work environments.]

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed and certified individuals.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Establishes

the scope of practice.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Proposed Amendment)

201 KAR 26:130. Complaint procedure.

RELATES TO: KRS 319.005, 319.082, 319.118, 319.990

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology, or using the title of psychologist. KRS 319.082 delineates the causes for which disciplinary action may be taken against a licensee, or certificate holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. This regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide for procedures in the receipt and disposition of complaints. [~~This regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.~~]

Section 1. Purpose and Rule of Construction. The purposes of this regulation is to establish procedures for filing, evaluating, and disposing of complaints. [~~Unless exceptional circumstances require otherwise, all complaints shall be in writing and shall bear the date and signature of the person making the complaint.~~]

Section 2. Definitions. (1) "Act" means the Chapter 319 of the Kentucky Revised Statutes.

(2) "Board" means the Kentucky Board of Examiners of Psychology or hearing panel.

(3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or the administrative regulations promulgated thereunder.

(4) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth charges against a licensee, certificate holder or applicant and commences a formal disciplinary proceeding.

(5) "Initiating complaint" means any allegation in whatever form alleging misconduct by a licensee, certificate holder, or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.

(6) "Order" means the whole or any part of a final disposition of a hearing.

(7) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(8) "Presiding officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any formal complaint. This shall be the hearing officer, if any, or otherwise, shall be a member of the hearing panel.

(9) "Respondent" means the person against whom an initiating or a formal complaint has been made. [~~Unless exceptional circumstances require otherwise, before a complaint is investigated it shall present evidence of a specific violation.~~]

Section 3. Initiating Complaint. (1) Source of initiating complaint. A complaint may be initiated by the board, by the public or by any state agency. A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid complaint.

(2) Form of initiating complaint. Initiating complaints shall be in writing and shall clearly identify the person against whom the complaint is being made. Further, the complaint shall contain the date, and shall identify by signature the person making the complaint, and shall contain a clear and concise statement of the facts giving rise to the complaint.

(3) Receipt of initiating complaint. A complaint[~~s~~] may be received by any board member, psychologist designated by the board, by the Office of the Attorney General, or by any [~~board~~] staff member.

(4) Consideration of initiating complaint. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board shall review the initiating complaint. At that time, the board shall determine if an investigation is warranted, and if so, the board may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the complaint.

(5) Investigation.

(a) The person about whom the initiating complaint has been considered shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he may respond to the allegations of the initiating complaint. A copy of the complaint shall be made available to the respondent prior to the meeting. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making such investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation. If there is reasonable cause to believe that a licensee, certificate holder or applicant for a license or certificate is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the licensee, certificate holder, or applicant to submit to an examination by a psychologist or a physician designated by the board to determine the licensee's, certificate holder's or applicant's psychological or physical status to practice psychology. The expense of this examination shall be borne by the board. The board shall then consider the findings and conclusions of such examination and the final investigative report at its next regularly-scheduled meeting or as soon thereafter as practicable.

(c) Consideration of complaint and investigative report. Based on consideration of the complaint, the investigative report, if any, and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act. If the investigator is a member of the board, he shall not vote. If it is determined that the facts alleged in the complaint or investigative report do not constitute a prima facie violation of the statute or administrative regulations, the board shall notify the person making the complaint and the respondent that no further action will be taken at the present time. If it is determined that there is a prima facie violation of KRS 319.082 or administrative regulations, the board shall issue a formal complaint against the licensee, certificate holder, or applicant. In the case of a prima facie violation of KRS 319.005, the

board shall file suit to enjoin the violator or shall seek criminal prosecution pursuant to KRS 319.990

Section 4. Formal Complaint. If the board determines that the initiating complaint shall be made a formal complaint, the following actions shall be initiated: [~~If the complaint warrants a formal hearing, the board shall provide the respondent with:~~]

(1) Issuance of formal complaint. The board shall provide the respondent with a written formal complaint which shall set forth: [~~A formal written presentation of charges;~~]

(a) Each offense charged;

(b) Notice of the respondent's right to be represented by counsel;

(c) Notice of the respondent's right to subpoena witnesses in the respondent's behalf; and

(d) Notice of the respondent's right to appeal after an adverse adjudication.

(2) Service of formal complaint. Service of process is sufficient if served on the respondent personally or by certified mail, return receipt requested, to his last known address, whether or not the complaint is subsequently claimed by respondent. [~~A notice of the right to be represented by counsel;~~]

(3) Issuance of hearing notice. At least twenty (20) days prior to the hearing, the board shall serve the respondent with notice of the hearing, giving the date, time, and place of the hearing. [~~A reasonable time to prepare any defense;~~

~~(4)[The right to answer charges;~~

~~(5) The right to subpoena witnesses in him or her behalf; or~~

~~(6) The notice of the right to appeal after an adjudication against them.~~]

Section 5. Formal Response. Within twenty (20) days of service of the formal complaint, the respondent shall file with the board a written response to the specific allegations set forth in the formal complaint. Allegations not properly responded to shall be deemed admitted. The board may, for good cause, permit the late filing of a response. [~~Any board member who has participated in the preliminary investigations shall not participate in the hearing process.~~

~~Section 6. All subpoenas shall be issued in the name of the board and shall be signed by the chairman of the board or a designated hearing officer. The person requesting the subpoena shall bear the cost of serving the subpoena, paying the witness fees and expenses. The board shall bear the cost of witnesses subpoenaed in the board's behalf.~~

~~Section 7. The board shall notify the person making the complaint and the person against whom the complaint was made of the final disposition of the matter.~~]

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person

CONTACT PERSON:

David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensees or certificate holders.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Establishes a complaint handling procedure.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Proposed Amendment)

201 KAR 26:140. Procedures for disciplinary hearings.

RELATES TO: KRS 319.092

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: KRS 319.092 mandates a hearing upon the filing of a complaint alleging a violation of KRS Chapter 319. This regulation establishes procedures for the conduct of administrative hearings held pursuant to KRS 319.092.

Section 1. Purpose and Rule of Construction. The purpose of this regulation is to enable the board to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the licensee, certificate holder or applicant. Accordingly, this regulation shall be liberally construed so as to aid in that process.

Section 2. Composition of the Hearing Panel [~~Tribunal~~]. (1) Disciplinary actions shall [~~will~~] be heard by a hearing panel [~~tribunal~~] consisting of the hearing officer and at least one (1) board member appointed by the board [~~at least a quorum of the board, the board's designated hearing officer, or both~~].

(2) A board member who has participated in the investigation of an initiating complaint [~~disciplinary action~~] or who has personal

knowledge of the facts giving rise to the complaint or for other reasons is unable to render a fair and impartial decision shall [will] not sit as a member of the panel [board] hearing that particular complaint [action].

(3) Separation of functions. No member, officer, or employee of the board who is engaged in the performance of investigative or prosecutorial functions for the board in a particular case or a factually related case, shall participate in or advise in the decision of the disciplinary action, except as a witness or counsel in the hearing.

Section 3. Rights of the Respondent [Licensee, Certificate Holder, or Applicant]. The licensee, certificate holder or applicant shall have the right to be present and to be heard at the hearing, to be represented by legal counsel, to present evidence, to cross-examine witnesses [presented by the attorney prosecuting the matter before the board], and to make both opening and closing statements. The respondent [licensee, certificate holder or applicant] shall also have the right to have appropriate subpoenas issued in accordance with KRS 319.092.

Section 4. Subpoenas. The board or the hearing officer shall issue subpoenas upon request. The person requesting the subpoenas shall bear the cost of serving the subpoenas, paying witness fees and expenses. The board shall bear the cost of witnesses subpoenaed on the board's behalf.

Section 5. Prehearing Disclosure of Evidence. (1) By the board. The respondent [licensee, certificate holder or applicant] shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The licensee, certificate holder or applicant shall have the right to such other information as the board or the hearing officer deems appropriate within ten (10) days of the hearing. Nothing in this section shall be construed as giving the licensee, certificate holder or applicant the right to examine or copy the personal notes, observations, conclusions, or work product of legal counsel prosecuting the allegations of the complaint or the Attorney General. An appointment for the examination of an investigative file shall [must] be made upon reasonable notice, during regular office hours, and at a time acceptable to the staff members involved in the investigation. The licensee, certificate holder or applicant shall be allowed to examine any items of tangible evidence in the possession of the board.

(2) By the respondent. At least ten (10) days prior to the scheduled hearing date the licensee, certificate holder or applicant shall furnish to the [investigator or] legal counsel prosecuting the allegations of the complaint copies of any documents which the respondent [licensee, certificate holder 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 by the respondent at the hearing [such other information as the board or the hearing officer deems appropriate]. The respondent [licensee, certificate holder or applicant] shall also furnish to legal counsel prosecuting the allegations of the complaint copies of any documents or other items of [produce for inspection any items or] tangible evidence within his [its] possession or [of] control which he [it] intends to introduce at the hearing and such other information as the board or the hearing officer deems appropriate.

[(3) At least ten (10) days prior to the scheduled hearing date the licensee, certificate holder or applicant shall file with the board a written response to the specific allegations contained in the notice of charges. The tribunal may for good cause permit the late filing of a response.]

(3) Continuing duty to disclose. [(4)] After disclosure has been completed each party shall remain under an obligation to disclose any new or additional items of evidence which may come to its attention. Such additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

(4) Sanctions for failure to comply with prehearing disclosure. If a party fails to comply with this section, the board hearing the disciplinary action may refuse to allow into evidence such items or testimony as have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make such other order as it deems appropriate. Sanctions may be applied by the presiding officer, subject to being overruled by a majority vote of the board.

Section 6. [5.] Order of Proceeding. (1) Call to order. The presiding officer shall [will] call the meeting to order and shall [will] identify the parties to the action and the persons present. The presiding officer shall [will] rule upon any objections or motions, subject to being overruled by a majority vote of the board.

(2) Opening statements. Opening statements shall [will] be made, with the attorney prosecuting the allegations of the complaint proceeding first. Either side may waive opening statement, but opening statements may not be reserved. The presiding officer may impose reasonable limitations upon the time allowed for opening statements, subject to being overruled by a majority vote of the board.

(3) Taking of proof on behalf of the board. [(2)] The taking of proof shall [will] commence with the calling of witnesses on behalf of the attorney prosecuting the matter before the board. Such witnesses shall [will] be examined first by the attorney prosecuting the allegations of the complaint. An opportunity to cross-examine the witness shall then be given to the respondent, then to the members of the board, and then to the hearing officer, if any. [, then by the licensee, certificate holder or applicant or that person's attorney, and finally by the hearing officer or members of the board. Rebuttal examination of witnesses will proceed in the same order.] Documents or other items may be introduced into evidence as appropriate.

(4) Taking of proof on behalf of the respondent. [(3)] Upon conclusion of the case for the attorney prosecuting the matter before the board the respondent shall [licensee, certificate holder or applicant will] call his [its] witnesses. Such witnesses shall [will] be examined first by the respondent [licensee, certificate holder or applicant] or that person's attorney. An opportunity to cross-examine the witness shall then be given to the attorney prosecuting the matter before the board, then to the members of the board, and then to the hearing officer, if any. [, then by the attorney prosecuting the allegations of the complaint, and finally by the hearing officer or members of the board. Rebuttal examination of those witnesses will proceed in the same order.] Documents or other evidence may be introduced as appropriate.

(5) Recess. The presiding officer may, at his discretion, recess a hearing for the taking of additional discovery and evidence as required, subject to being overruled by a majority vote of the board.

(6) Deposition testimony. Testimony to be considered by the board or hearing officer, if any, may be taken by deposition. A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and a showing that the other parties shall have an opportunity to cross-examine at said deposition. The presiding officer shall rule upon motions to allow testimony to be considered by deposition, subject to being overruled by a majority vote of the board.

(7) Closing statements. At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney prosecuting the matter proceeding last. The presiding officer may impose reasonable limitations on the time allowed for closing statements, subject to being overruled by a majority vote of the board.

(8) Decorum. The presiding officer shall [will] be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the complaint.

Section 7. [6.] Rules of Evidence. (1) The board or hearing officer [tribunal] shall not be bound by the technical rules of evidence. Subject to the discretion of the board or the hearing officer, the hearing panel [tribunal] may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the hearing panel [tribunal] is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) The board or hearing officer shall retain [tribunal retains] the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence shall [will] be made by the presiding officer, subject to being [but may be] overruled by a vote of the board.

(3) The board may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the board's specialized knowledge; provided, however, the parties shall be afforded an opportunity to contest the facts so noticed.

(4) Objections to evidentiary offers may be made and shall be noted in the record.

Section 8. [7.] Deliberations by the Board. (1) Ex parte investigations. The board shall not, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law, except upon notice and opportunity for all parties to participate; provided, however, that any board member may consult with other members of the board hearing the case, and the hearing officer, if any.

(2) [Decisions by the Tribunal.] Upon the conclusion of the hearing, the board and the hearing officer, if any, shall [will] retire into closed session for the purpose of deliberations. The board shall make a decision based upon the evidence submitted. A decision shall be made by a majority vote of the board. Each board member shall have one (1) vote. The hearing officer shall not vote.

(3) An order including findings of fact and conclusions of law consistent with the board's decision shall be drafted. Said proposed order shall be submitted for signature to the board on the day of the deliberation or at the next regularly-scheduled meeting of the board or as soon thereafter as possible.

(4) A copy of the order shall be provided to the respondent, the person initiating the complaint, and the attorney prosecuting the case.

Section 9. Record to be Maintained. (1) The hearing shall be transcribed by a court stenographer.

(2) A transcript of the testimony taken during the hearing shall be kept by the board. A copy of that transcript shall be available to the respondent from the court stenographer, or, if the stenographer is unable to furnish a copy, from the board upon request and payment of the appropriate fee. A copy of the transcript of the hearing shall be available to all board members. Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the presiding officer.

Section 10. Continuance; Proceedings in Absentia. [8.] It is the policy of the board not to postpone cases which have been scheduled for hearing absent good cause. A request by a licensee, certificate holder or applicant or attorney prosecuting the allegations of the complaint for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall [will] be made by the hearing officer or chairman of the board. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall [will] be deemed a waiver of the right to appear and the hearing shall [will] be held as scheduled.

Section 11. Hearing Fee. If the board finds against the respondent on any charge, or if the hearing is scheduled at the request of a licensee, certificate holder or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 319, a hearing fee in an amount equal to the costs of stenographic services and the costs of the services of a hearing officer, if any, shall be assessed against the respondent. In case of financial hardship, the board may waive all or part of the fee.

Section 12. Notification of Action Taken. A press release describing all final disciplinary actions taken by the board to suspend, revoke, or refuse to issue or renew a license or certificate or accept an assurance of voluntary compliance, restrict, or place a licensee or certificate holder on probation shall be provided at least to the newspapers with the largest circulation in Louisville, Lexington, Frankfort, the city of business of the respondent and to the AP wire service. Nothing in this regulation shall be construed to limit KRS 319.092(5).

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensees, certificate holders, and applicants.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Establishes hearing procedures.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Proposed Amendment)

201 KAR 26:160. Fee schedule [~~for applications for licensure as a psychologist, certification as a psychologist with autonomous functioning and certification as psychological associate~~].

RELATES TO: KRS 319.050, 319.058, 319.062, 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: This administrative regulation is necessitated by KRS 319.050, 319.058, 319.062 and 319.064 and sets forth in detail all fees charged by the board. [~~To establish a fee schedule for licensure as a psychologist, certification as a psychologist, certification as a psychologist with autonomous functioning certification as a psychological associate pursuant to applicable statutes, to authorize the board to refund fees under certain conditions, and to establish a fee schedule for reexaminations.~~]

Section 1. (1) The fee for application for licensure as a psychologist shall be computed as follows:

(a) A fifty (50) dollar application review fee;

(b) A $250 [~~135~~] fee for the taking of the examination for professional practice in psychology; and

(c) A fifty (50) dollar fee for the taking of the structured oral examination. If a candidate has previously taken the EPPP in another state and achieved a score which would be considered as passing in Kentucky, paragraph (b) of this subsection of the application fee shall be waived.

(2) [~~The fee for application for certification as a certified psychologist with autonomous functioning shall be as follows:~~

~~(a) $100 if the applicant has passed the Examination for Professional Practice in Psychology given by the board at one (1) standard deviation below the mean;~~

~~(b) $200 if the applicant has not passed the Examination for Professional Practice in Psychology at one (1) standard deviation below the mean.~~

~~(3)~~] The fee for application for certification as a psychological associate shall be computed as follows:

(a) A fifty (50) dollar application review fee;

(b) A $250 [~~135~~] fee for the taking of the examination for professional practice in psychology.

If a candidate has previously taken the EPPP in another state and achieved a score which would be considered as passing in Kentucky, paragraph (b) of this subsection of the application fee shall be waived.

(3) [~~(4)~~] Upon successful completion of all portions of the application and examination processes, the initial licensure or certification fees shall be as follows:

(a) Applicants for licensure [~~and for certification with autonomous functioning~~] shall pay $200 for the first three (3) year period;

(b) Applicants for certification as a psychological associate shall pay $150 for the first three (3) year period.

(4) [~~(5)~~] Every three (3) years licensed psychologists and certified psychologists with autonomous functioning shall pay to the board a renewal fee of $300 [~~200~~] and shall receive a renewal license or certificate.

(5) [~~(6)~~] Every three (3) years certified psychologists and psychological associates shall pay to the board a renewal fee of $200 [~~150~~] and shall receive a renewal certificate [~~certification~~].

Section 2. (1) If the applicant fails the examination for professional practice in psychology and applies to retake this examination, the fee shall be $250 [~~135~~].

(2) If the applicant fails the structured oral examination and applies to retake this examination, the fee shall be fifty (50) dollars.

(3) An application for licensure or certification by reciprocity shall [~~must~~] be accompanied by a fee of $100.

Section 3. (1) The board may refund the fee for the EPPP and the fee for the structured oral examination, if applicable, if the application has been approved, but is withdrawn prior to the applicant taking the examination for professional practice in psychology.

(2) The board may refund the fee for the EPPP and the fee for the structured oral examination, if applicable, if the application to sit for these [~~this~~] examinations is denied.

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensees, certificate holders, and applicants.

(a) Direct and indirect costs or savings to those affected: Licensees: increase of $100 in the three-year license renewal fee; Certificate holders: increase of $50 in the three-year license renewal fee; applicants: increase of $115 in examination fee.

1. First year: As outlined above.

2. Continuing costs or savings: As outlined above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Unchanged

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The increase in the exam fee allows the board to break even. The increase in the renewal fees will allow the board to continue to function.

1 . First year: As outlined above.

2. Continuing costs or savings: As outlined above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: Board revenue will increase to meet increased costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Proposed Amendment)

201 KAR 26:171. Requirements for supervision [~~of certified psychologists, psychological associates, and candidates for licensure~~].

RELATES TO: KRS 319.050, 319.058, 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: KRS 319.032 requires regulations governing the supervision of certified psychologists, psychological associates, [~~and~~] candidates for licensure and certification, and license or certificate holders sanctioned by the board. This administrative regulation defines the requirements for such supervision.

Section 1. All supervisory arrangements shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing. [~~Certified Psychologists. (1) Approval of supervision. With the exception of those certified psychologists granted autonomous functioning pursuant to KRS 319.062, no certified psychologist may perform functions within the practice of psychology unless supervised by a licensed psychologist under conditions and arrangements approved by the board. The certified psychologist and the proposed supervisor must apply to the board, in writing, for approval of the supervision.~~

~~(2) Direct supervision. One (1) hour of individual face to face supervision on a weekly basis is required for the first two (2) years following certification. Thereafter, the supervisory arrangement may be modified upon petition to and approval by the board.~~

~~(3) Reports of supervision. The supervisor must submit a written report on an annual basis for the first five (5) years following certification which describes the functioning of the certified psychologist. Thereafter, the supervisor may request approval by the board to submit reports once every two (2) years. The reports should include a description of functions, frequency of supervision, strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the functioning of the certified psychologist.~~

~~(4) Responsibilities of the supervisor. The licensed psychologist may not supervise a total of more than six (6) applicants for licensure, certified psychologists, or psychological associates at one (1) time. The supervisor must provide reports of supervision to the board in a timely manner. The supervisor is required to inform the board of any change in the ability to supervise or the ability of the certified psychologist to function.~~

~~(5) Responsibilities of the certified psychologist. The certified psychologist is responsible for keeping the supervisor adequately informed at all times and for seeking supervision as needed in addition to regularly scheduled supervisory sessions. The certified psychologist is responsible for checking to see that reports of supervision have been sent to the board in a timely manner.~~

~~(6) Identification of provider. The actual deliverer of services must be identified to the client and on all billings for services rendered indicating services performed by the certified psychologist and supervised by the licensed psychologist.~~]

Section 2. All supervision requirements shall be met with individual, face-to-face, weekly contact between supervisor and supervisee unless otherwise specified in these administrative regulations. [~~Psychological Associates. (1) Approval of supervision. No psychological associate may perform functions within the practice of psychology unless supervised by a licensed psychologist under conditions and arrangements approved by the board. The psychological associate and the proposed supervisor must apply to the board, in writing, for approval of the supervision.~~

~~(2) Direct supervision. One (1) hour of individual face to face supervision on a weekly basis is required.~~

~~(3) Reports of supervision. The supervisor must submit a written report on an annual basis which describes the functioning of the psychological associate. The reports should include a description of functions, frequency of supervision, strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the functioning of the psychological associate.~~

~~(4) Responsibilities of the supervisor. The licensed psychologist may not supervise a total of more than six (6) applicants for licensure, certified psychologists, or psychological associates at one (1) time. The supervisor must provide reports of supervision to the board in a timely manner. The supervisor is required to inform the board of any change in the ability to supervise or the ability of the psychological associate to function.~~

~~(5) Responsibilities of the psychological associate. The psychological associate is responsible for keeping the supervisor adequately informed at all times and for seeking supervision as needed in addition to regularly scheduled supervisory sessions. The psychological associate is responsible for checking to see that reports of supervision have been sent to the board in a timely manner.~~

~~(6) Identification of provider. The actual deliverer of services must be identified to the client and on all billings for services rendered, indicating services performed by the psychological associate and supervised by the licensed psychologist. Formal evaluation reports shall be signed by both the psychological associate and the supervising licensed psychologist.~~]

Section 3. (1) A certified psychologist or psychological associate may petition the board to be relieved of their obligation to maintain supervision during which period they may not practice psychology.

(2) The certified psychologist or psychological associate shall obtain a supervisor approved by the board before the resumption of practice.

(3) Upon renewal, the certified psychologist or psychological associate shall document compliance with continuing education requirements and shall report on their professional activities and employment during the period without supervision. [~~Candidates for Licensure. (1) Approval of supervision. No candidate for licensure may practice psychology unless supervised by a licensed psychologist under conditions and arrangements approved by the board. An applicant for licensure whose application and supervision have been approved by the board, may apply to the board for permission to practice psychology under the supervision of a licensed psychologist until the results of the next regularly scheduled examination for licensure are known.~~

~~(2) Direct supervision. One (1) hour of individual face to face supervision on a weekly basis is required until the candidate passes all examinations for the granting of licensure.~~

~~(3) Reports of supervision. The supervisor must submit a minimum of one (1) written report describing the skills of the candi-~~

~~date. The board may request additional reports if needed to assess the candidate's functioning. The reports should include a description of the function, frequency of supervision, strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the practice of the candidate. This report must be submitted prior to the date of the next regularly scheduled examination for licensure.~~

~~(4) Responsibilities of the supervisor. The licensed psychologist may not supervise a total of more than six (6) applicants for licensure, certified psychologists, or psychological associates at one (1) time. The supervisor must provide reports of supervision to the board in a timely manner. The supervisor is required to inform the board of any change in the ability to supervise or the ability of the candidate for licensure to function.~~

~~(5) Responsibilities of the candidate for licensure. The candidate for licensure is responsible for keeping the supervisor adequately informed at all times and for seeking supervision as needed in addition to regularly scheduled supervisory sessions. The candidate for licensure is responsible for checking to see that reports of supervision have been sent to the board in a timely manner.~~

~~(6) Termination of supervisory relationship of candidates for licensure. Following successful completion of the licensure requirements, the supervisory relationship will no longer be required.~~]

Section 4. (1) A licensed psychologist who currently functions as a supervisor with the permission of the board, shall attend a board-approved training session in supervisory practices by December 30, 1996. Failure to do so shall result in suspension of board approval as a supervisor.

(2) A licensed psychologist, who obtains for the first time board approval to function as a supervisor, shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining supervisory status.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall be responsible for reporting to the board any apparent violation of the statutes or administrative regulations on the part of the supervisee.

(3) The supervisor shall be required to inform the board immediately of any change in the ability to supervise, or any change in the ability of any supervisee to function in the practice of psychology in a competent manner.

(4) The supervisor shall have the right and the responsibility to control, direct or limit the supervisee's practice in any way deemed appropriate to insure that the supervisee's practice of psychology is competent.

Section 6. (1) The supervisor shall provide reports to the board of the supervision of each supervisee according to the following schedule:

Credential Status	Reporting Period	Report Due Date(s)
Psychological Associate	Yearly	January 15th
Certified Psychologist	Yearly	January 15th
Certified Psychologist (with 5 or more years of full-time practice)	Every 2 Years (with prior board approval)	January 15th
Temporarily Licensed Psychologist	Every 6 Months and (wi/month prior to oral exam)	
Temporarily Certified Psychological Associate	Every 6 Months	April & October 15th
Sanctioned Psychologist	Quarterly	January, April, July and October 15th

(2) The reports shall include a description of the frequency, format and duration of supervision, an assessment of the functioning of the supervisee, including the strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. When a supervisee has more than one (1) board-approved supervisor, these supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide annual supervisory plans and reports to the board and copies to one another.

Section 8. If the supervisee is either a psychological associate, or a certified psychologist with less than five (5) years of full-time practice, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

(1) Read and countersign all psychological assessments;

(2) Review treatment plans, progress notes and correspondence on an as-needed basis to assess the competency of the supervisee to render psychological services;

(3) Jointly establish with the supervisee and submit a supervisory plan to the board at the beginning of the supervisory relationship. The plan shall:

(a) Be updated or revised annually and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.

(4) Have direct observation of the supervisee's work at least once every two (2) months. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 9. If the supervisee is a certified psychologist with more than five (5) years of full-time practice, the supervisor of record shall:

(1) Review and countersign psychological assessments as needed or appropriate;

(2) Review treatment plans, notes, and correspondence as needed or appropriate;

(3) Jointly establish with the supervisee and submit a supervisory plan to the board at the beginning of the supervisory relationship. The plan shall:

(a) Be updated or revised annually and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.

(4) Have direct observation of the supervisee's work on an as-needed basis;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the super-

visee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 10. (1) The supervisee shall be responsible for keeping the supervisor adequately informed at all times of their activities and their ability to function, and for seeking supervision as needed in addition to regularly scheduled supervisory sessions.

(2) The supervisee shall participate with the supervisor in establishing yearly supervisory goals and in completing the regular supervisory reports.

(3) The supervisee shall be jointly responsible with the supervisor for ensuring that supervisory reports and plans have been sent to the board in keeping with the reporting schedule.

(4) The supervisee shall be responsible for reporting to the board any apparent violation of the statutes or administrative regulations, on the part of the supervisor.

Section 11. Identification of Provider. The actual deliverer of services shall be identified to the client and on all billings for services rendered, indicating services performed by the certified psychologist or psychological associate and supervised by the licensed psychologist.

Section 12. Frequency of Supervision. (1)(a) Psychological associates shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following certification.

(b) After two (2) years of full-time practice, the supervisor and supervisee may petition the board to alter the format, frequency or duration of supervision as long as proposed changes include a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period.

(2)(a) Certified psychologists shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following certification.

(b) Thereafter, the supervisor and supervisee may petition the board for modification of the supervisory arrangement, with a minimum amount of supervision of one (1) hour per month.

Section 13. The board shall appoint an approved supervisor to supervise the sanctioned psychologist for the period of time defined by the board. The sanctioned psychologist shall be responsible for the fee for supervision.

(1) The board shall appoint a board member to serve as a liaison between the board and the approved supervisor;

(2) The board liaison shall be responsible for defining in writing to the supervisor and the supervisee cause for the sanctioned psychologist to be receiving board-mandated supervision and the expected goals or outcomes of the supervision;

(3) The approved supervisor and the sanctioned psychologist shall establish a written plan for supervision that incorporates the goals or expected outcomes as defined by the board liaison. This plan shall have board approval;

(4) The approved supervisor shall submit quarterly reports to the board which reflect progress, problems, and any other information relevant to the need for board-mandated supervision;

(5) The board, at its discretion, may reduce the supervision requirement or may alter the original supervisory requirement if there is sufficient evidence presented to the board that the goals or expected outcomes of supervision have been accomplished; (6) The board, at its discretion, may alter the goals or expected outcomes of the supervision, or may approve a change of supervisors, or may direct a change of supervisors if there is sufficient evidence presented to the board that the goals or expected outcomes of supervision or are not being met.

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Supervisory relationships must be reported periodically.

(2) Effects on the promulgating administrative body: This relationship increases the board's ability to monitor supervisory relationships.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements are outlined in the regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Proposed Amendment)

201 KAR 26:180. Requirements for granting licensure or certification in psychology by reciprocity.

RELATES TO: KRS 319.032
s]STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: KRS 319.032 requires the adoption of regulations for the granting of license[s] or [and] certificate[s] through reciprocity. This regulation establishes the requirements for such licensure or certification.

Section 1. The board may issue a license or certificate to any applicant who qualifies for a license or certificate pursuant to an agreement of reciprocity entered into by the board of this jurisdiction with the board or boards of any other jurisdiction or multiple jurisdictions. [The applicant for licensure or certification in psychology by reciprocity must hold a current valid license/certificate to practice psychology in at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board that is a constituent member of the American Association of State Psychology Boards.]

Section 2. The applicant for licensure or certification in psychology by reciprocity shall hold a current valid license or certificate in good standing to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards and with whom this board has an agreement of reciprocity. [The board will consider the following criteria in determining if licensure or certification will be granted by reciprocity:

(1) Requirements for licensure in KRS 319.050 or certification in KRS 319.058 or KRS 319.064 and related regulations.

(2) Standards for admission to examination including training, experience, and references.

(3) Examination procedures including criteria for passing each portion.

(4) Applicant's professional experience including review of credentials (e.g., possession of Diplomate from the American Board of Professional Psychology), complaints, or hearings held in previous jurisdictions.

(5) Applicant's professional references.]

Section 3. [Portions of the examination for licensure or certification may be required if the applicant did not take such a portion for licensure or certification in another state or recognized jurisdiction or if the applicant's score was not at a passing level according to Kentucky standards. Portions of the examination may be waived if in the judgment of the board the applicant has met an equivalent standard or examination. However,] The board shall conduct a [must have at least one (1)] face-to-face examination of an [interview with such] applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of [or certification as a certified psychologist who must pass an oral examination on ethical principles, professional practice, and] Kentucky mental health law [administered by an authorized examination team].

Section 4. An applicant for licensure with the health service provider designation shall demonstrate that he is qualified in at least one (1) of the specialty areas of clinical, counseling, or school psychology. [The board may require documented evidence or copies of examinations completed by the applicant as well as work samples of recent services provided in the practice of psychology.]

Section 5. When the applicant has no postdoctoral supervised year of experience, a determination may be made by the board of the applicant's practice experience, with five (5) years of full-time practice after licensure or certification as an equivalent of the required year of postdoctoral experience. [An application fee equal to that required by other applicants for licensure (KRS 319.050(1)(a)) or certification (KRS 319.059(1)(a) or KRS 319.064(1)(a)) must accompany the application in order for it to be considered regardless of the number or type of examination portions that may be waived.]

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas
(1) Type and number of entities affected: Persons wishing to be granted licensure by reciprocity.
(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.
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: Acquiring licensure by reciprocity will be substantially easier under this regulation.
(2) Effects on the promulgating administrative body: Streamlines the reciprocity process.
(a) Direct and indirect costs or savings: There will not be any costs or savings.
1 . First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Reporting requirements will be substantially less.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Proposed Amendment)

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: Certain terms are used in the statute regulating the requirements for supervised professional experience. This regulation defines those terms.

Section 1. Definitions. (1) The predoctoral year, or the first year of a two (2) year postdoctoral supervised professional experience is [~~These applying for licensure must complete one (1) year of supervised professional experience~~] defined as 1,800 [~~2,000~~] hours with at least 100 hours of supervisory sessions distributed over the year.

(2) The postdoctoral year, or the second of a two (2) year postdoctoral supervised professional experience is defined as 1,800 hours with at least one (1) hour of individual face-to-face supervision on a weekly basis.

(3) The supervisors shall [~~must~~] be licensed psychologists or doctoral-level psychologists who meet the standards of applicable state law. [~~and must be approved by the board.~~]

Section 2. For those persons applying for licensure in either clinical or counseling psychology, the predoctoral internship or first year of a two (2) year postdoctoral program shall meet the following criteria:

(1) The experience shall occur within an organized training program, in contrast to supervised experience or on-the-job training and has a planned, programmed sequence of training experiences;

(2) The training program, typically called an internship, shall have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed by the Board of Examiners in Psychology or who is licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law;

(3) The internship agency shall have two (2) or more psychologists on the staff as supervisors, at least one (1) of whom is actively licensed as a psychologist by the Board of Examiners in Psychology or who is licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law;

(4) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;

(5) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(6) At least twenty-five (25) percent of the trainee's time shall be in direct client contact (minimum 450 hours);

(7) The internship shall include a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, group supervision;

(8) Training shall be postclerkship, postpracticum and postexternship level;

(9) The internship shall have a written statement or brochure which describes the goals and content of the internship, stated clear expectations for quality and quantity the of trainee's work and which is made available to prospective interns; and

(10) The internship experience (minimum 1,800 hours) shall be completed within twenty-four (24) months. [~~For purposes of this regulation, the designation "health service provider" shall be made on the license of those psychologists who perform activities which include the delivery or supervision of direct health care services to individuals or groups of individuals who are the intended beneficiaries of such services.~~]

Section 3. For those persons applying for licensure in school psychology, the predoctoral internship or first year of a two (2) year postdoctoral program shall meet the following criteria:

(1) The experience shall occur within an organized training program which provides a sequence of experiences, including practice and field experiences;

(2) The training program, typically called an internship, shall provide training in a range of assessment and intervention activities conducted with and for children and youth needing school psychological services;

(3) The internship agency shall have a clearly designated staff member who shall be responsible for the integrity and quality of the internship program, but who does not necessarily provide the supervision;

(4) Internship supervision shall be provided by a professional psychologist who is currently licensed by a State or Provincial Board of Examiners in Psychology or who is licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law;

(a) The supervisor shall be a staff member of the internship agency or an affiliate of that unit who carries responsibility for cases being supervised, and when necessary, can change procedures and techniques for the intern and provide input to the agency staff.

(b)The supervisor may be provided by the school (agency), the intern, or the sending graduate program. When internship supervision is provided by an affiliate of that agency, a regular member of the agency staff must be responsible for providing administrative review.

(5) The internship includes an average of at least two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with school psychological services rendered directly by the intern. The supervisor shall provide an average of one (1) hour a week of supervision but may delegate other supervision to appropriate members of the psychological service unit;

(6) In addition to individual supervision there shall be an additional average of at least two (2) hours per week in scheduled learning activities, which may be done in conjunction with professionals other than school psychologists, such as:

(a) Case conferences involving a case in which the intern is actively involved;

(b) Seminars dealing with professional issues; or

(c) Inservice training.

(7) Supervision and education shall account for at least ten (10) percent (150 hours) of the intern's time. Some of the activities may occur at times other than the "regular" work day;

(8) The total internship experience may occur in more than one (1) setting but shall include a minimum of 1,500 hours and shall be completed within twenty-four (24) months;

(9) At least twenty-five (25) percent (375 hours) of the trainee's time shall be in direct client contact;

(10) The intern may spend up to twenty-five (25) percent (375 hours) of the time in research activity;

(11) The intern shall have scheduled and unscheduled opportunities to interact with interns, school psychologists, and/or other psychologists. It is desirable for the internship agency to have two (2) or more such persons on the staff, but small agencies may meet this criterion by planning meetings with appropriate personnel in the area;

(12) The intern shall have the opportunity to interact profes-

sionally with persons from other disciplines and other agencies;

(13) The trainee has a title such as "intern", "resident," "fellow," or other designation of trainee status; and

(14) The internship agency, preparing institution, and intern have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work. [No one who does not have the designation "health service provider" may provide or supervise direct health care services. Those persons applying for licensure in the specialty areas of clinical, counseling, or school psychology shall have the designation "health service provider."

Section 4. Those persons applying for licensure with the designation "health service provider," excluding those applying in the specialty area of school psychology, must complete one (1) year of supervised professional experience defined as follows:

(1) The experience occurs within an organized training program, in contrast to supervised experience or on the job training and has a planned, programmed sequence of training experiences.

(2) The training program, typically called an internship, has a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed by the Board of Examiners in Psychology.

(3) The internship agency has two (2) or more psychologists on the staff as supervisors, at least one (1) of whom is actively licensed as a psychologist by the Board of Examiners in Psychology.

(4) Internship supervision is provided by a staff member of the internship agency or by an affiliate of that agency who carried clinical responsibility for the cases being supervised. At least half of the internship supervision is provided by one (1) or more psychologists with an appropriate doctorate degree.

(5) The internship provides training in a range of assessment and treatment activities conducted directly with clients seeking psychological services.

(6) At least twenty five (25) percent of the trainee's time is in direct client contact (minimum 375 hours).

(7) The internship includes a minimum of two (2) hours per week of regularly scheduled, formal, face to face individual supervision. There must also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, group supervision.

(8) Training is postclerkship, postpracticum and postexternship level.

(9) The internship has a written statement or brochure which describes the goals and content of the internship, stated clear expectations for quality and quantity of trainee's work and which is made available to prospective interns.

(10) The internship experience (minimum 2000 hours) is completed within twenty four (24) months.

Section 5. Those persons applying for licensure with the designation "health service provider" in the specialty area of school psychology, shall have completed one (1) year of supervised professional experience defined as follows:

(1) The experience occurs within an organized training program which provides a sequence of experiences, including practical and field experiences.

(2) The training program, typically called an internship, provides training in a range of assessment and intervention activities conducted with and for children and youth needing school psychological services.

(3) The internship agency has a clearly designated staff member who is responsible for the integrity and quality of the internship program, but who does not necessarily provide the supervision.

(4) Internship supervision is provided by a professional psychologist who is currently licensed by State/Provincial Board of Examiners in Psychology. The supervisor is a staff member of the internship agency or an affiliate of that unit who carried responsibility for cases being supervised, and when necessary, can change procedures and techniques for the intern and provide input to the agency staff. The affiliate may be provided by the school (agency), the intern, or the sending graduate program. When internship supervision is provided by an affiliate of that agency, a regular member of the agency staff must be responsible for providing administrative review.

(5) The internship includes an average of at least two (2) hours per week of regularly scheduled, formal, face to face individual supervision with the specific intent of dealing with school psychological services rendered directly by the intern. The mentor must provide an average of one (1) hour a week of supervision but may delegate other supervision to appropriate members of the psychological service unit.

(6) In addition to individual supervision there is an additional average of at least two (2) hours per week in scheduled learning activities such as: case conferences involving a case in which the intern is actively involved, seminars dealing with professional issues, in service training. These activities may be in conjunction with professionals other than school psychologists.

(7) Supervision and education will account for at least ten (10) percent (150 hours) of the intern's time. Some of the activities may occur at times other than the "regular" work day.

(8) The total internship experience may occur in more than one (1) setting but must include a minimum of 1500 hours and must be completed within twenty four (24) months.

(9) At least twenty five (25) percent (375 hours) of the trainee's time is in direct client contact.

(10) The intern may spend up to twenty five (25) percent (375 hours) of the time in research activity.

(11) The intern shall have scheduled and unscheduled opportunities to interact with interns, school psychologists, and/or other psychologists. It is desirable for the internship agency to have two (2) or more such persons on the staff, but small agencies may meet this criterion by planning meetings with appropriate personnel in the area.

(12) The intern shall have the opportunity to interact professionally with persons from other disciplines and other agencies.

(13) The trainee has a title such as "intern," "resident," "fellow," or other designation of trainee status.

(14) The internship agency, preparing institution, and intern have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 6. For psychologists licensed in the specialty areas of clinical, counseling, or school psychology prior to the adoption of this regulation, the board shall issue a stamp designating "health service provider" at the regular renewal time of each license. The designating seal may be obtained at an earlier date by paying a fee of ten (10) dollars to the state board.

Section 7. Applicants wishing to obtain the designation "health service provider" whose license was granted prior to the adoption of this regulation, in specialty areas other than clinical, counseling, or school psychology may apply for a review of their record by the board as to whether their supervised experience meets the criteria specified by the board. A nonrefundable fee of fifty (50) dollars must accompany the application for review.]

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the

Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: Applicants for licensure as a psychologist.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Similar to those in existence.

(2) Effects on the promulgating administrative body: Defines required period of supervised experience.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1 . First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Proposed Amendment)

201 KAR 26:230. Examinations.

RELATES TO: KRS 319.050, 319.058, 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: KRS 319.032 requires regulations governing the examination of applicants for licensure and certification. This regulation outlines requirements concerning examinations.

Section 1. General Requirements. (1) The board shall [~~will~~] publish pertinent instructions and establish the examination schedule which shall [~~will~~] include: the place, the time, and the final date by which the board shall [~~must~~] have received the applicant's materials.

(2) An applicant for examination shall [~~must~~] submit a complete application and pay the required fee to the board in a timely manner. Once the application has been approved by the board, the [~~an~~] applicant shall [~~will~~] be scheduled to take the examination at the next regularly scheduled date.

(3) If an applicant fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee.

(4) If an applicant fails to appear for or to complete the examination without a valid reason, the applicant shall [~~will~~] forfeit all fees paid.

(5) If an applicant fails to appear for a second scheduled examination without presenting a valid reason in writing such as illness or death in the immediate family, the application shall [~~will~~] be terminated on the date of the examination, and the applicant shall [~~will~~] be denied licensure or [~~/~~] certification on the basis of failure of the examination by default. The applicant may not practice psychology or use the title "psychologist."

Section 2. Examination for Licensure. (1) An applicant for licensure shall submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination Service and owned by the Association of State and Provincial Psychology Boards. The applicant shall obtain a score equal to passage of seventy (70) percent of the test items.

(2) An applicant for licensure who has been approved to sit for the objective examination (EPPP) and whose supervisory arrangement has been approved by the board shall [~~will~~] be considered to be functioning under a temporary license until all requirements for licensure have been completed. [~~the results of the next regularly scheduled examination are known.~~]

(3) If an applicant for licensure fails the objective examination, the candidate may, with payment of the required fee, be rescheduled to take the examination at its next regularly scheduled date.

(a) The candidate shall continue to function under the supervision of the board-approved supervisor.

(b) The candidate may not be scheduled for the oral examination until the objective examination (EPPP) has been successfully passed and 1,800 hours of supervised experience have been approved by the board.

(c) The candidate shall continue to function under the supervision of the approved supervisor until all examinations are successfully completed.

(4) [~~(2)~~] If an applicant for licensure fails the oral examination, the board may, upon the development of a remediation plan acceptable to the board, reissue the temporary license to function under supervision until the results of the next examination are known. Under no circumstances shall [~~can~~] a temporary license be renewed by the board more than two (2) times.

(5) [~~(3)~~] If an applicant for licensure fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary license to function under supervision.

(6) [~~(4)~~] If an applicant for licensure fails to appear for or to complete the examination without a valid reason, the applicant shall [~~will~~] forfeit all fees paid. [~~Moreover,~~] The approved application shall [~~will~~] no longer constitute a temporary license and the applicant for licensure may not practice psychology, or use the title "psychologist."

[~~(5) An applicant for licensure shall submit to an examination~~

~~composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal to or greater than one (1) standard deviation below the national mean score for all doctoral candidates.~~]

(7) [~~(6)~~] An applicant for licensure shall submit to a structured oral examination administered by two (2) licensed psychologists, at least [~~one (1) of whom is a member of the board and~~] one (1) of whom is licensed in the candidate's specialty area.

(a) This examination shall [~~will~~] cover ethical principles, professional practice in the candidate's specialty area and Kentucky Mental Health Law.

(b) Each examiner shall [~~will~~] independently rate the applicant's performance.

(c) The applicant shall [~~must~~] demonstrate an acceptable level of knowledge in [~~of~~] each of the three (3) areas in order to pass the examination.

(d) Both examiners shall be required to [~~must~~] rate the applicant as having passed in order for the applicant to have passed.

(8) If the applicant fails the first oral examination, the applicant may reapply with a remediation plan.

(a) Upon completion of the remediation plan approved by the board, the applicant shall [~~will~~] be administered an oral examination [~~examined~~] by a second team composed in the same manner as the first team.

(b) If the second oral examination is failed, the applicant may reapply with a remediation plan.

(c) Upon completion of the approved remediation plan, the applicant shall be administered an examination by a team of the licensed members of the board and appointed examiners as needed.

(d) A majority of the examining team shall rate the applicant as having passed in each of the three (3) areas in order to pass the examination.

(9) [~~(7)~~] If the applicant [~~person who has been admitted to the examination~~] for licensure fails [~~but who failed~~] to pass the examination, and wishes to apply for certification, a completed application for certification and the appropriate fee, if required, shall [~~must~~] be submitted with the proposed area of competency and supervision indicated. The board shall [~~will~~] accept the applicant's previous examination results to satisfy [~~if the original test scores of each portion required satisfies~~] the certification requirements as to criteria level and area of competency.

[~~Section 3. Examination for Certification as a Certified Psychologist. (1) An applicant for certification as a certified psychologist who has been approved to sit for the examination and whose supervisory arrangement has been approved by the board will be considered to be functioning under a temporary certificate until the results of the next regularly scheduled examination are known.~~

~~(2) If an applicant for certification fails the examination, the board may, upon the development of a remediation plan acceptable to the board, reissue the temporary certificate to function under supervision until the results of the next regularly scheduled examination are known. Under no circumstances can a temporary certificate be renewed by the board more than two (2) times.~~

~~(3) If an applicant for certification fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary certificate to function under supervision.~~

~~(4) If an applicant for certification fails to appear for or to complete the examination without a valid reason, the applicant will forfeit all fees paid. Moreover, the approved application will no longer constitute a temporary certificate and the applicant for certification may not practice psychology, or use the title "psychologist."~~

~~(5) An applicant for certification as a certified psychologist shall submit to an examination composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal to or greater than one (1) standard deviation below the national mean score for all doctoral candidates.~~

~~(6) An applicant for certification as a certified psychologist shall submit to a structured oral examination administered by two (2) psychologists one (1) of whom is a certified psychologist or certified psychological associate, and one (1) of whom must be credentialed in the candidate's specialty area. This examination will cover ethical principles, professional practice in the candidate's specialty area, and Kentucky Mental Health Law. Each examiner will independently rate the applicant's performance. The applicant must demonstrate an acceptable level of knowledge of each of the three (3) areas in order to pass the examination. Both examiners must rate the applicant as having passed in order for the applicant to have passed. If the applicant fails the oral examination, the applicant may reapply with a remediation plan. Upon completion of the remediation plan approved by the board, the applicant will be examined by a second team composed in the same manner as the first team.~~]

Section 3. [~~4.~~] Examination for Certification as a Psychological Associate. (1) An applicant for certification as a psychologist associate shall submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination Service and owned by the Association of State and Provincial Psychology Boards. The applicant shall obtain a score equal to or greater than passage of sixty (60) percent of the test items.

(2) An applicant for certification as a psychological associate who has been approved to sit for examination and whose supervisory arrangement has been approved by the board shall [~~will~~] be considered to be functioning under a temporary certificate until the results of the next regularly scheduled examination are known.

(3) [~~(2)~~] If an applicant for certification fails the examination, the board may, upon the development of a remediation plan acceptable to the board, reissue the temporary certificate to function under supervision until the results of the next regularly scheduled examination are known. Under no circumstances shall [~~can~~] a temporary certificate be renewed by the board more than two (2) times.

(4) [~~(3)~~] If an applicant for certification fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary certificate to function under supervision.

(5) [~~(4)~~] If an applicant for certification fails to appear for or to complete the examination without a valid reason, the applicant shall [~~will~~] forfeit all fees paid. [~~Moreover,~~] The approved application shall [~~will~~] no longer constitute a temporary certificate and the applicant for certification may not practice psychology, or use the title "psychologist" or "psychological associate".

[~~(5) An applicant for certification as a certified psychologist shall submit to an examination composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal to or greater than one (1) standard deviation below the national mean score for all nondoctoral candidates.~~]

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the

offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: Candidates for licensure or certification.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Reporting requirements will be the same.

(2) Effects on the promulgating administrative body: Sets out the examination process.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1 . First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

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

301 KAR 1:085. Mussel shell harvesting.

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

STATUTORY AUTHORITY: KRS 13A.150, 150.025, 150.170, 150.175, 150.520

NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking mussels because of their value and their susceptibility to overharvest. This amendment is necessary to allow licensed musselers to employ a helper, to require that mussel buyers only purchase shells from licensed musselers or other mussel buyers, to require that no person shall possess more than six (6) mussel shells without an appropriate mussel license, to restrict brailing on certain weekends and holidays, to prohibit possession of illegal gear while musseling, to establish one (1) new sanctuary and expand two (2) existing sanctuaries for the protection of certain endangered mussels, and to incorporate by reference the musseling waters maps of Barkley and Kentucky Lakes. [~~require that brail boats be marked with license numbers, to make possession of green mussels unlawful without an appropriate license, and to reschedule the musseling hours on Barkley and Kentucky lakes.~~]

Section 1. All persons except helpers and those specified in Section 4 of this administrative regulation, who actively participate in the harvesting and sale of mussels or mussel shells, whether or not they own or possess the gear being used in the harvest of mussels or mussel shells, shall have an appropriate license. Each licensed musseler may employ one (1) helper to assist in the harvesting, transporting and sale of mussels. Each helper shall be accompanied by a licensed musseler when brailing, transporting or selling shells. [~~Those persons having a valid mussel buyers license are authorized to sell mussels and mussel shells. No boat shall be used in musseling operations without a licensed operator in the boat.~~]

Section 2. Only those persons having a valid musseling license or mussel buyers license are authorized to sell mussels or mussel shells. Mussel buyers shall purchase mussels or mussel shells only from those individuals possessing a valid musseling license or mussel buyers license. [~~All musselers shall have their current year musseling license number clearly painted or affixed to their brail boat so as to be clearly visible from the air.~~]

Section 3. All musselers shall have their department issued identification number clearly painted or affixed to their brail boat so as to be clearly visible from the air. No boat shall be used in musseling operations without a licensed musseler in the boat. [~~No person shall possess green mussels (mussel shells containing mussel meat) without having an appropriate Kentucky musseling license or mussel buyer's license.~~]

Section 4. No person shall possess more than six (6) mussels without having an appropriate musseling license or mussel buyers license. Mussels shall be legal size according to Section 9 of this administrative regulation.

Section 5. [~~4.~~] Only those individuals who purchased a valid musseling license in either 1990 or prior to December 1 in 1991 shall be allowed to purchase a 1992 license. In 1993 only those individuals who purchased a musseling license in 1991 or 1992 will be eligible with the same two (2) year eligibility criterion being applied in succeeding years.

Section 6. [~~5.~~] Except as specified in Sections 7 and 8 [6] of this regulation, the musseling season is open year around only on the following waters:

(1) Kentucky Lake;
(2) Barkley Lake;
(3) Tennessee River from Kentucky Lake dam to the mouth;
(4) Cumberland River from Barkley Lake dam to the mouth;
(5) Ohio River;
(6) Green River from Green River Lake dam to the mouth;
(7) Barren River from Barren River Lake dam to the mouth;
(8) Kentucky River from Beattyville downstream to the mouth;
(9) Rough River from Rough River Lake dam to the mouth;
(10) Rolling Fork River.

Section 7. [6.] Musseling is prohibited in the following designated areas which are established as mussel sanctuaries:

(1) The Tennessee River from Kentucky Dam downstream to river mile seventeen and eight-tenths (17.8).

(2) The stream segments 200 yards below any dam on any stream.

(3) The Cumberland River from Barkley Dam downstream to U.S Highway 62 bridge.

(4) All embayments on Barkley and Kentucky Lakes as defined by the Kentucky Lake Musseling Waters Map and the Lake Barkley Musseling Waters Map, both of which are hereby incorporated by reference. Maps shall be available for inspection or purchase by contacting the Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. on Monday through Friday, except holidays. The effective date of the maps shall be August 15, 1993.

(5) The Ohio River between river mile 418 and river mile 419 and between river mile 965.0 and river mile 974.1 [966.3 and river mile 970.0].

(6) The Green River from lock and dam #5 downstream four and eight-tenths (4.8) miles to the confluence of Ivy Creek and from the eastern boundary of Mammoth Cave National Park upstream twenty-nine and six-tenths (29.6) miles to the US Highway 31E bridge. [one and three tenths (1.3) miles to the state Highway 185 bridge.]

(7) The Barren River from lock and dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch.

Section 8. [7.] Musseling is permitted during the hours of 6 a.m. and 6 p.m. daily except in Barkley and Kentucky Lakes where the hours shall be as follows:

(1) West side of each lake [the river channel] as marked by the red navigation buoys or fifty-five (55) feet of water depth [on both lakes].

(a) December - February - 8:30 a.m to 3:30 p.m.

(b) March - November - 8 a.m. to 6 p.m.

(2) East side of each lake [the river channel] as marked by the red navigation buoys on both lakes.

(a) December - February - 9:30 a.m. to 3 p.m.

(b) March - November - 9:30 a.m. to 5 p.m.

(3) Exception: The brailing hours for the entire canal area connecting Kentucky and Barkley lakes and all of Barkley Lake from Barkley Dam south to Cumberland River mile 36.2 (Big Horse Ford light and day marker) shall be as follows:

(a) December - February - 8:30 a.m. to 3:30 p.m.

(b) March - November - 8 a.m. to 6 p.m.

(4) Saturday and Sunday brailing on Kentucky Lake is prohibited during the month of March and during the period beginning on the Saturday preceding Memorial Day and extending through Labor Day.

(5) Saturday and Sunday brailing on Barkley Lake is prohibited beginning on the Saturday preceding Memorial Day and extending through the 30th day of September. Brailing is further prohibited on Kentucky and Barkley Lakes on Memorial Day, July 4th and Labor Day.

Section 9. [8.] The statewide size limits for taking of mussels shall be as follows. All mussels smaller than these minimum sizes shall immediately be returned to the bed [water] from which taken.

(1) Washboard mussels, Megalonaias nervosa [gigantea], shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of three and three-fourths (3 3/4) inches.

(2) Three (3) ridge mussels, Amblema plicata, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and three-fourths (2 3/4) inches.

(3) All other mussels, except the Asiatic clam, Corbicula sp. shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and one-half (2 1/2) inches.

(4) The Asiatic clam, Corbicula sp., may be taken at any size.

Section 10. [9.] Method of Harvest. (1) Mussel harvesting, except as provided in Section 11 [10] of this regulation, shall be by brail only.

(2) No more than two (2) brails each sixteen (16) feet or less in length shall be simultaneously operated from any boat.

(3) More than two (2) brails may be carried aboard the boat.

(4) Mussel brail hooks shall be constructed of wire of at least fourteen (14) gauge; smaller wire is prohibited.

(5) Prongs of hooks shall be no longer than one and one-fourth (1 1/4) inch as measured from the tip of point to place on hook where the prongs are joined.

(6) No person shall possess dredges or compressed air tanks while on a licensed brail boat.

Section 11. [10.] The Commissioner may designate as disaster areas waters in which all live mussels have been killed, and may issue a special permit allowing the use of various harvest methods.

Section 12. [11.] No mussels designated as endangered shall be taken.

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: August 9, 1993

FILED WITH LRC: August 10, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, September 23, 1993 at 2 p.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, KY. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 1993, 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 canceled. This hearing is open to the public. Any person who attends shall 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: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: There are approximately 450 licensed musselers, 10 licensed mussel buyers, 300 licensed commercial fishermen and numerous sport anglers.

(a) Direct and indirect costs or savings to those affected: The restriction on Saturday and Sunday brailing could cause some economic loss especially during periods of unfavorable weather conditions.

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 increased reporting or paperwork are required.

(2) Effects on the promulgating administrative body: No additional effort will be required. Policing will be a part of ongoing routine patrol. Closer regulation of buying and selling and the prohibition of the possession of illegal gear should increase law enforcement efficiency.

(a) Direct and indirect costs or savings: No significant additional

costs or savings will occur.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

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

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Many alternative approaches that could be used where explored but rejected by the Mussel Advisory Group as unacceptable.

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

(a) Necessity of proposed administrative 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: These regulation changes were developed by the Kentucky and Barkley Lakes Mussel Advisory Group. The Group was comprised of 30 individuals representing the various interests affected by the harvest of mussels by brail. Group consensus was achieved on the majority of the regulatory changes.

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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

301 KAR 1:200. Seasons and limits for angling.

RELATES TO: KRS 150.010, 150.470, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.170, 150.470

NECESSITY AND FUNCTION: In order to insure the continuance of viable and desirable populations of fish, it is necessary to govern the size and numbers anglers can harvest. This amendment is necessary to establish a nine (9) inch size limit on crappie at Carr Fork and Rough River Lakes, to reduce the size limit on crappie at Barren Lake to nine (9) inches, to establish a fifteen (15) inch size limit on largemouth bass at Shanty Hollow and Marion County Lakes, to remove the size limit on largemouth bass at Mauzy Lake, to reduce the creel limit to two (2) and set a twenty-four (24) inch size limit on striped bass in Cumberland Lake to bring the fishing regulations at Dale Hollow Lake in compliance with Tennessee's regulations, and to match the fishing regulations, on the Ohio River with those of Indiana, Illinois, and Ohio. ~~[angling regulations for Goose, Island and South Lakes (Peabody WMA).]~~

Section 1. The statewide creel limits, size limits and possession limits for taking fish by angling shall be as follows, except as specified in Section 3 of this regulation and as provided in 301 KAR 1:180:

Species	Size Limit Inches	Daily Creel Limit	Possession Limit
Black bass:*			
Largemouth	12	6	12
Smallmouth	12	Singly	Singly
Kentucky (spotted)	None	or in	or in
Coosa	12	Aggregate	Aggregate
Rock bass (goggle eye or redeye)	None	15	30
Walleye and their hybrids	15	10	20
Sauger	None	10	20
Muskellunge and their hybrids	30	2	2
Chain pickerel	None	5	10
White bass and yellow bass	None	30	60
Striped bass (rockfish) and their hybrids	15	5	5
Crappie	None	30	60
Rainbow trout & brown trout	None	8 No more than 3 may be brown trout	8
Brook trout	10	2	2

*For size limit purposes, any black bass, with the exception of the smallmouth, with a patch of teeth on its tongue is considered to be a Kentucky bass.

Section 2. Seasons for all species is year around.

Section 3. The following special limits apply. All other angling limits and seasons apply as set forth in Sections 1 and 2 of this regulation.

(1) The impounded waters of Grayson Lake. The size limit on largemouth bass and smallmouth bass is fifteen (15) inches. There are no daily creel or possession limits on crappie.

(2) The impounded and flowing waters of Dix River and its tributaries upstream from Herrington Lake Dam:

	Size Limit Inches	Daily Creel Limit	Possession Limit
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(3) Dix River from Herrington Lake Dam downstream a distance of two (2) miles. The size limit for brown trout is fifteen (15) inches. Fishing is permitted only with artificial lures or flies.

(4) The impounded waters of Taylorsville Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches. The daily creel and possession limits for crappie are fifteen (15) and thirty (30) respectively. The size limit and daily creel/possession limit for hybrid striped bass, white bass and yellow bass are fifteen (15) inches and five (5) singly or in aggregate, respectively.

(5) The impounded waters of Kentucky and Barkley Lakes, including the connecting canal. The size limit for largemouth bass and smallmouth bass is fourteen (14) inches, except that the daily limit may include no more than one (1) and the possession limit no more

than two (2) less than fourteen (14) inches in length. The size limit for crappie is ten (10) inches.

(6) The impounded waters of Cave Run, Yatesville, Paintsville, Carr Fork, Buckhorn and Dewey Lakes. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches.

(7) The impounded and flowing waters of Barren River and its tributaries upstream from Barren River Lake Dam.

	Size Limit Inches	Daily Creel Limit	Possession Limit
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer. The size limit for crappie is nine (9) [~~ten (10)~~] inches. The size limit for largemouth and smallmouth bass is fifteen (15) inches except that the daily creel limit may include no more than one (1) and the possession limit no more than two (2) less than fifteen (15) inches.

(8) The impounded waters of Cumberland Lake. The size limit for largemouth and smallmouth bass is fifteen (15) inches. The size, creel and possession limits for striped bass (rockfish) are twenty-four (24) inches, two (2), and two (2), [~~three (3) and three (3)~~] respectively. The size limit for crappie is ten (10) inches.

(9) In the following brook trout streams fishing is permitted only with artificial flies or lures with a single hook.

(a) Shillalah Creek, Bell County (outside boundary of Cumberland Gap National Park);

(b) Martins Fork and tributaries in Harlan County from Left Fork upstream 2.3 miles to the Cumberland Gap National Historical Park boundary;

(c) Bad Branch, Letcher County;

(d) Poor Fork and tributaries in Letcher County from the headwaters downstream to the first crossing of Highway 392;

(e) Parched Corn Creek, Wolfe County.

(10) The impounded waters of Carter Caves Lake. The size limit for largemouth bass is twenty (20) inches. The daily creel and possession limits for largemouth bass are one (1) and one (1) respectively. Fishing is permitted only during daylight hours.

(11) The impounded waters of Lake Reba. The size limit for largemouth and smallmouth bass is fifteen (15) inches.

(12) The impounded waters of Lincoln Homestead State Park Lake:

Species	Size Limit Inches	Daily/Possession Limit
Largemouth bass	15	3
Bluegill and redear sunfish (singly or in aggregate)	over 7	10
	under 7	No Limit
Channel catfish	None	3

Fishing is permitted during daylight hours only.

(13) Ohio River:

Species	Size Limit Inches	Daily Creel Limit
Walleye, sauger & their hybrids	None	10 singly or in aggregate

White bass, yellow bass, striped bass and their hybrids: no more than four (4) fish of a daily limit of thirty (30) may be greater than fifteen (15) inches in length. [~~The daily creel limit for crappie is sixty (60), the daily creel limit for white bass and yellow bass is sixty (60), (singly or in aggregate).~~]

(14) The impounded waters of Nolin, Rough River, and Green River Lakes. The size limit for crappie is nine (9) inches.

(15) The impounded waters of Shanty Hollow and Marion County lakes. There is a fifteen (15) inch [~~no~~] size limit on black bass.

(16) The impounded waters of Leary Lake:

Species	Size Limit Inches	Daily Creel Limit
Largemouth bass	15	1
Bluegill	None	12
Channel catfish	None	2

Fishing is permitted during daylight hours only.

(17) The impounded waters of Lake Malone. The size limit on black bass is twelve (12) inches except that the daily creel limit may include no more than two (2) and the possession limit no more than four (4) black bass less than twelve (12) inches in length.

(18) The impounded waters of Elmer Davis Lake. Slot limit -black bass less than twelve (12) inches or more than sixteen (16) inches in length may be kept. Black bass between twelve (12) and sixteen (16) inches in length shall be released.

(19) Upper and lower Game Farm Lakes.

Species	Size Limit Inches	Daily Creel Limit
Black bass	15	2
Channel catfish	None	3

(20) The removal of grass carp from lakes owned and managed by the Kentucky Department of Fish and Wildlife Resources is prohibited.

(21) The impounded waters of Guist Creek Lake. The size limit and daily creel/possession limit for hybrid striped bass, white bass and yellow bass are fifteen (15) inches and five (5) singly or in aggregate, respectively.

(22) The impounded waters of Fishtrap Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches. The size limit and daily creel/possession limit for hybrid striped bass, white bass and yellow bass are fifteen (15) inches and five (5) singly or in aggregate, respectively.

(23) The Tennessee River from Kentucky Lake Dam downstream to the confluence with the Ohio River and the Cumberland River from Barkley Lake Dam downstream to the confluence with the Ohio River. The daily creel/possession limit for striped bass is three (3).

(24) Elkhorn Creek (Franklin County) from the confluence of the North and South Forks downstream to the Kentucky River. Slot limit - smallmouth bass and largemouth bass less than twelve (12) inches or more than sixteen (16) inches in length may be kept. Smallmouth bass and largemouth bass between twelve (12) and sixteen (16) inches in length shall be released. The daily creel limit of six (6) may include no more than two (2) bass greater than sixteen (16) inches in length.

(25) The impounded waters of Carr Fork Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches. The size limit for crappie is nine (9) inches.

[~~(25) The impounded waters of Goose, Island, and South Lakes (Peabody WMA).~~

~~Species~~	~~Creel Limit~~	~~Size Limit~~
~~Largemouth bass~~	~~1~~	~~20"~~
~~Bluegill~~	~~15~~	~~None~~

~~Redbreast sunfish 15 None~~
~~Channel catfish 2 15"~~
~~Walleye/hybrids 1 15"~~
~~Crappie 10 None~~
~~Fishing season is from July 1 through October 15 annually. Fishing allowed during daylight hours only. No frog hunting allowed.]~~

(26) The impounded waters of Mauzy Lake. There is no size limit on largemouth bass.

(27) The impounded waters of Dale Hollow Lake:

Species	Size Limit Inches	Daily Creel Limit
Smallmouth bass	18	2
Walleye	16	10
Sauger	14	10
Muskellunge	30	1

The seasons and limits for rainbow trout and lake trout are as follows: April 1 - October 31: daily limit of seven (7), of which no more than two (2) may be lake trout. November 1 - March 31: daily limit of two (2), twenty-two (22) inch size limit.

Section 4. Measure all fish from the end of the lower jaw to the tip of the tail with fish laid flat on rule, mouth closed and tail lobes squeezed together. All fish caught that are smaller than those prescribed minimum lengths shall be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above- named fish while in the field and before he has completed fishing for the day.

Section 5. The amendments to this administrative regulation shall not be enforced until March 1, 1994.

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: August 9, 1993
FILED WITH LRC: August 10, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, September 23, 1993 at 9 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, KY. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 1993, 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 canceled. This hearing is open to the public. Any person who attends shall 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: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick.

(1) Type and number of entities affected: There are approximately 1,00,000 anglers that fish in Kentucky waters each year.

(a) Direct and indirect costs or savings to those affected: There are no measurable direct or indirect costs or savings.

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

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

(2) Effects on the promulgating administrative body: Some additional effort will be required. Policing is a part of ongoing routine patrol.

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

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

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

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no reasonable alternative approaches that could be used to effectively manage these fishery resources.

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

(a) Necessity of proposed administrative 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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

301 KAR 2:044. Taking of migratory wildlife.

RELATES TO: KRS [~~150.010,~~] 150.015, 150.025, 150.170, 150.300, [~~150.305,~~] 150.320, 150.330, 150.340, 150.360, 150.603

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.170, 150.320, 150.340, 150.360 [~~150.025~~]

NECESSITY AND FUNCTION: In accordance with KRS 150.015, this administrative regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this administrative regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates where appropriate and add provisions governing use of steel shot.

Section 1. Seasons. Migratory birds in the section shall only be taken during the seasons listed.

(1) Doves: September 1 through September 30; October 9 [~~10~~] through November 1 [~~2~~]; December 4 [~~November 28~~] through December 9 [~~3~~].

(2) Woodcock: October 16 [~~17~~] through December 19 [~~20~~].

(3) Common snipe: September 15 [~~16~~] through October 29 [~~30~~] and November 25 [~~26~~] through January 25, 1993.

(4) Wood duck and teal (blue-winged, green-winged and cinnamon teal): September 15 [~~16~~] through September 19 [~~20~~].

(5) Virginia and sora rails, common moorhen and purple gallinule: September 1 through November 9.

Section 2. Bag and Possession Limits. The following bag and possession limits shall apply to all migratory birds listed in this section.

(1) Doves: bag limit fifteen (15) per day and thirty (30) in possession.

(2) Woodcock: bag limit five (5) per day and ten (10) in possession.

(3) Common snipe: bag limit eight (8) per day and sixteen (16) in possession.

(4) Virginia and sora rails: bag limit twenty-five (25) per day, singly or in aggregate and twenty-five (25) in possession.

(5) Common moorhen and purple gallinules: bag limit fifteen (15) per day singly or in aggregate and thirty (30) in possession.

(6) Wood duck and teal: bag limit four (4) per day of which not more than two (2) may be wood ducks and possession limit of eight (8) of which not more than four (4) may be wood ducks.

(7) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(8) The above species (except doves) dressed in the field, or being prepared for transportation, shall have one (1) fully feathered wing or head attached to the bird for identification purposes.

Section 3. Shooting Hours. The following shooting hours shall apply to all migratory birds listed in this section.

(1) Doves: from 11 a.m. until sunset during the period September 1 through September 30 and October 9 [~~10~~] through November 1 [~~2~~]; from sunrise to sunset during the period December 4 [~~November 28~~] through December 9 [~~3~~].

(2) Common snipe, woodcock, Virginia and sora rails, purple gallinule and common moorhen: from one-half (1/2) hour before sunrise to sunset.

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

Section 4. Falconry Hunting. The wildlife species listed in this administrative regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits shall apply to falconry hunting.

Section 5. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this administrative regulation shall apply to the following areas:

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

(a) Doves: September 1 through September 30; and October 9 [~~10~~] through October 13 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.

(b) Woodcock: seasons closed.

(c) Common snipe: September 15 [~~16~~] through October 13.

(d) Virginia and sora rails, purple gallinule and common moorhen: September 1 through October 13.

(e) Wood duck and teal: Same as statewide.

(f) For paragraphs (a) through (e) of this subsection, areas designated by signs are closed to hunting.

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

(a) Doves: September 1 through September 30; and October 9 [~~10~~] through October 13 only.

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

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

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

(a) Doves: September 1 through September 30; and October 9 [~~10~~] through October 13 only.

(b) Woodcock: seasons closed.

(c) Common snipe: September 15 [~~16~~] through October 13.

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

(a) Doves: September 1 through September 24 [~~30~~] and December 4 [~~1~~] through December 9 [~~3~~] only.

(b) Woodcock: December 1 through December 19 [~~20~~] only.

(c) Common snipe: September 15 [~~16~~] through September 24 [~~25~~] and December 1 through January 25, 1993.

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

(a) Doves: postwide from September 1 through September 30, October 9 through November 3, and December 4 through 9. [~~25 and November 28 through December 3. On designated areas from September 26 through September 28; October 10 through November 2.~~]

(b) Woodcock: postwide from November 25 [~~26~~] through December 17 [~~11. On designated areas only from December 12 through December 20~~].

(c) Snipe: postwide from September 15 [~~16~~] through September 24 [~~25~~], November 25 [~~26~~] through December 11 and January 2[~~, 1993~~] through January 24 [~~25, 1993~~]. On designated areas only from December 10 [~~12~~] through December 31 [~~20~~].

(d) September wood duck and teal: September 19 [~~17 through 20~~] only. [~~Hunting permitted during these permits in designated areas only.~~]

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

(a) Doves: September 1 through September 30; and October 9 [~~10~~] through October 13 only.

(b) Wood duck and teal: September 15 [~~16~~] through September 19 [~~20~~].

(7) Grayson Lake Wildlife Management Area. All migratory bird hunters shall [~~must~~] check in and out daily at designated check stations.

(8) Yatesville Lake Wildlife Management Area. All migratory bird hunters shall [~~must~~] check in and out daily at designated hunter check stations.

(9) Closed areas.

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

(b) Migratory [~~Waterfowl~~] bird hunting is prohibited on the following areas on Grayson Lake: within the no wake zone at the dam site marina, from the shores of Camp Webb and the State Park and on Deer Creek Fork of Grayson Lake.

(10)(a) The department shall set dove hunter density limits for fields on wildlife management areas after considering the:

1. Terrain of the fields;
2. Topography of the fields;
3. Providing for approximately forty (40) yards between hunters.

(b) Strategically located signs shall be posted in fields advising hunters:

1. Of recommended hunter densities; and
2. That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(c) Any person behaving in an unsafe or uncooperative manner shall be required to leave the premises.

Section 6. Waterfowl Stamp Requirements. Those hunting ducks

during the experimental September duck season shall possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

Section 7. Use of Steel Shot. Only steel shot shall be possessed and used by hunters when taking or attempting to take waterfowl statewide.

(1) Prohibition of lead shot for dove hunting. Lead shot shall not be used for the taking of doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms and Westvaco Wildlife Management Areas.

(2) Possession of lead shot shells.

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

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

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: June 15, 1993

FILED WITH LRC: July 29, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 1993 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1993, 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 canceled. 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, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation. Steel shot will be required in two additional counties and half of another this year. Steel shot costs approximately $2.00 more per box of 25 shells than does lead shot.

1. First year: Persons participating in the hunting proposed for authorization by this administrative regulation would be required to possess a valid hunting license ($12.50 for residents) unless exempt by administrative regulations. Waterfowl hunters would be required to possess a $15.00 Federal migratory bird hunting and conservation stamp and a $5.25 state waterfowl stamp.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Randomly selected waterfowl hunters will be asked to report their hunting success by completing and mailing a Kentucky and Federal Waterfowl Survey in a postage paid envelope.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs and savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this administrative regulation is $140,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The results of the waterfowl harvest survey will be tabulated and reported to the U.S. Fish and Wildlife Service in accordance with experimental hunting season agreement.

(3) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about $228 a season on food, lodging, transportation and equipment. This will add about $20,520,000 to the income of local businesses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None known.

(a) Necessity of proposed administrative 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. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20 / Federal Register / Vol. 58, No. 133, Friday, July 10, 1992.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate.

Woodcock - season frameworks between September 1, 1993, and January 31, 1994, with a 65 day maximum season. Bag limits may be a maximum of 5 per day with 10 in possession.

Wood duck and teal - season frameworks allow 5 days in September. Bag limits may total 4 per day with not more than two of these being wood ducks. Possession limit is 8 of which not more than 4 can be wood ducks.

Dove - season frameworks allow either 70 or 60 days between September 1, 1993, and January 15, 1994. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season.

Common snipe - season frameworks allow a 107 day season between September 1, 1993 and February 28, 1994. Bag and possession limit is 8 and 16, respectively.

Virginia and sora rails - season framework between September 1, 1993 and January 20, 1994. Bag and possession limit of 25 per day, singly or in aggregate.

Common moorhen and purple gallinule - season framework between September 1, 1993 and January 20, 1994. Daily bag limit of 15, singly or in aggregate. Possession limit is twice the daily bag limit.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures.

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

301 KAR 2:171. Deer hunting seasons.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.170, 150.175

NECESSITY AND FUNCTION: This administrative regulation pertains to deer hunting in specified counties and on wildlife management areas (WMAs). This administrative regulation is necessary to set deer hunting season dates, to specify the counties and management areas open to deer hunting and to prescribe the methods by which deer may be legally taken. The function of this administrative regulation is to provide for the prudent taking of deer within reasonable limits, and to insure a permanent and continuing supply of deer for present and future residents of the state. This amendment [~~administrative regulation~~] is necessary to change the requirement for landowners to check in their deer. [~~adjust for zones, dates, weapons, and limits in the deer seasons.~~]

Section 1. Definitions. As used in this administrative regulation, unless the context otherwise requires:

(1) "Adult" means an individual at least eighteen (18) years of age.

(2) "Antlered deer" means any deer that has one (1) antler at least four (4) inches in length, measured from the skin to the tip of the antler.

(3) "Antlerless deer" means does and any buck that has both antlers less than four (4) inches long, measured from the skin to the tips of the antlers.

(4) "Archery equipment" means long bows, recurve bows and compound bows incapable of holding an arrow at full or partial draw without aid from the archer.

(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(6) "Breech-loading or modern gun" means any rifle, handgun or shotgun in which the cartridge or shotshell is placed into the gun at the rear of the barrel.

(7) "Center-fire" means a cartridge that fires by the firing pin striking a primer in the center of the end of the cartridge case.

(8) "Crossbow equipment" means any device designed to hold an arrow (or bolt) at full or partial draw without aid from the archer.

(9) "Deer control tags" means those tags issued by the department to landowners for distribution to licensed or license exempt deer hunters during the season and used in the control of deer causing damage to private property or farm crops.

(10) "Firearms" means all breech and muzzle-loading rifles, shotguns and handguns.

(11) "Muzzle-loading gun" means any rifle, shotgun or handgun in which the bullet or projectile, is placed in the gun from the discharging end of the barrel.

(12) "Private inholdings" means any privately-owned properties completely surrounded by wildlife management area lands controlled by the Department of Fish and Wildlife Resources.

(13) "Shotshell" means multiple-projectile or pelleted ammunition.

(14) "Slug" means single-projectile ammunition.

(15) "WMA tags" means those permits issued by the department to hunters to tag deer taken during WMA hunts.

Section 2. County Zone Assignments. The following counties are open to deer hunting during the periods specified in Section 4 of this administrative regulation. County zone assignments shall apply to the entire deer hunting season.

(1) Zone No. 1: Crittenden, Hancock, Jefferson, Livingston, and Oldham.

(2) Zone No. 2: Boone, Gallatin, Hopkins, Muhlenberg, Nelson, Ohio, and Webster.

(3) Zone No. 3: Allen, Anderson, Ballard, Boyle, Bracken, Breckinridge, Bullitt, Campbell, Carroll, Christian, Fulton, Grant, Graves, Grayson, Hardin, Henderson, Kenton, Logan, Lyon, Marion, Meade, Shelby, Todd, Trigg, Trimble, and Woodford.

(4) Zone No. 4: Adair, Barren, Butler, Caldwell, Calloway, Carlisle, Casey, Cumberland, Daviess, Franklin, Green, Harrison, Henry, Hickman, Larue, McCracken, McLean, Mercer, Monroe, Owen, Pendleton, Robertson, Scott, Simpson, Spencer, Taylor, Union, Warren, and Washington.

(5) Zone No. 5: Boyd, Carter, Clinton, Edmonson, Elliott, Greenup, Hart, Lawrence, Marshall, Mason, Metcalfe and Nicholas.

(6) Zone No. 6: Bath, Clark, Fleming, Garrard, Lewis, Lincoln, Madison, Martin, McCreary, Menifee, Morgan, Pulaski, Rowan, Russell, Wayne, and Whitley.

(7) Zone No. 7: Bell, Bourbon, Breathitt, Clay, Estill, Fayette, Floyd, Harlan, Jackson, Jessamine, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Montgomery, Owsley, Perry, Powell, Rockcastle, and Wolfe.

Section 3. Counties and Areas Closed to Deer Hunting. (1) Counties: Pike.

(2) Wildlife management areas: Daviess County Gun Club in Daviess County, Fishtrap WMA in Pike County, Robinson Forest WMA in Breathitt, Perry, and Knott counties, and Swan Lake WMA in Ballard County.

(3) Deer hunting shall be prohibited within the boundaries of all national parks.

Section 4. Deer Hunting Dates and Tag Restrictions. (1) Archery and crossbow dates and restrictions.

(a) Archery equipment shall be used for deer hunting October 1 through January 15, except during modern gun, muzzle-loading gun or crossbow season when archery equipment may be used. Crossbow equipment may be used the fourth Tuesday in November for ten (10) consecutive days, and during periods open to muzzle-loading gun or modern gun use only. Except as specified in paragraph (b) of this subsection, in Zones 1-6, the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer only. In Zone 7, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid.

(b) Persons using archery or crossbow equipment during periods when modern guns are also permitted for deer hunting shall abide by the tag restrictions for modern gun season in effect for that period. Likewise, persons using archery or crossbow equipment during periods when muzzle-loading guns are also permitted for deer shall abide by the tag restrictions for muzzle-loading gun seasons in effect for that period.

(2) Muzzle-loading gun dates and restrictions.

(a) Muzzle-loading guns may be used for deer hunting the third Saturday in October for two (2) consecutive days and the second Saturday in December for seven (7) consecutive days. During these periods, in Zones 1-5 the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer only. In Zones 6-7, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid during these periods.

(b) Persons using muzzle-loading guns during the period when modern guns may also be used for deer hunting shall abide by the tag restrictions for modern gun season in effect for that period.

(3) Modern gun dates and restrictions.

(a) Modern guns specified in Section 5 of this administrative regulation may be used for deer hunting the second Saturday in November for ten (10) consecutive days, except in Zone 7 as specified below. This shall be the only period when modern guns shall be permitted for deer, except as permitted during muzzle-loader or modern gun quota hunts on wildlife management areas as specified in Section 9 of this administrative regulation.

(b) In Zone 1 the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer during the entire ten (10) day period.

(c) In Zone 2, during the first five (5) days the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer. During the last five (5) days, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid.

(d) In Zone 3, during the first two (2) days the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer. During the last eight (8) days, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid.

(e) In Zone 4, during the first eight (8) [~~nine (9)~~] days the white tag shall be valid for antlered deer only, and the yellow tag shall be invalid. The last two (2) days the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer.

(f) In Zones 5 and 6, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid for the entire ten (10) day period.

(g) In Zone 7, the white tag shall be valid only for the first five (5) days and only for antlered deer. The yellow tag shall be invalid during this period.

(h) During this ten (10) day period, any legal deer hunting equipment may be used, including archery, crossbow, muzzle-loading and modern guns, and all hunters shall abide by the tag and other restrictions for modern gun hunting. Persons using archery or crossbow equipment during the last five (5) days of this ten (10) day period in Zone 7 shall abide by tag restrictions for archery hunting specified in Section 4(1)(a) of this administrative regulation.

Section 5. Equipment Requirements and Restrictions. (1) Only the following gun and archery equipment used as described shall be permitted for taking deer during the periods specified in Section 4 of this administrative regulation:

(a) Breech-loading or modern guns: centerfire rifles and handguns; shotguns up to ten (10) gauge maximum used with slug ammunition only. Muzzle-loading guns: rifles .40 caliber or larger and handguns .44 caliber or larger; shotguns up to ten (10) gauge maximum used with slug ammunition only.

(b) Archery: compound bows, longbows, recurve bows and crossbows may be used. Arrows or crossbow bolts shall not be fitted with barbed broadhead points. Broadhead points shall be at least seven-eights (7/8) inch wide. Crossbows shall have a working safety device.

(2) The following gun and archery equipment and ammunition shall be prohibited for taking deer:

(a) Equipment: any fully automatic firearm, or firearm capable of firing more than one (1) round with one (1) trigger pull; semiautomatic and pump rifles or shotguns with a magazine capacity exceeding ten (10) rounds; longbows, recurve and compound bows fitted with any device capable of holding an arrow at full or partial draw without aid of the hunter; and chemically treated arrows, bolts or broadheads, or any type of chemical attachment.

(b) Ammunition: any caliber or cartridge that does not meet the requirements stated in this section, any fully jacketed ammunition, tracer bullet ammunition or any type of shotshell.

Section 6. License and Permit Requirements, Hunting Method Exemptions and Bag Limit. (1) License requirements:

(a) All resident and nonresident deer hunters except those exempted by KRS 150.170 shall possess a valid annual hunting license and deer permit. A temporary five (5) day hunting license shall not be used in conjunction with the deer permit. Deer permits shall be signed by the holder before hunting.

(b) Persons age sixteen (16) and above required to possess a hunting license and deer permit shall use only one (1) two (2) tag deer permit per license year. Persons who are in possession of a valid junior hunting license may use a maximum of two (2) individual junior deer hunting permits or one (1) two (2) tag permit. The tag accompanying a junior deer hunting permit shall be used as either the yellow or white tag according to the tag restrictions of the season in the zone where it is used. Persons losing their deer permit may purchase another one after having filed an affidavit with the licensing agent stating the fact of loss. Use of any portion of the deer permit by someone other than the person whose name is signed on the permit shall not be permitted, except as specified in administrative regulation 301 KAR 2:211.

(2) Hunting methods exemptions for handicapped hunters. Persons with physical handicaps that make it impossible for them to hunt by conventional methods may apply by letter to the commissioner of the department for a hunting methods exemption. The application letter shall be accompanied by a physician's statement that the applicant is handicapped to such a degree that the exemption is necessary in order for the applicant to hunt. The commissioner may authorize any reasonable exception that would permit a handicapped person to hunt when he could not otherwise do so because of his handicap. Specific exemptions to be allowed shall be described in the letter of authorization and shall be retained in the possession of the applicant while hunting. Hunting methods exemptions shall expire at the end of the license year.

(3) Season limit: an individual may take a maximum of two (2) deer per license year, only one (1) of which may be antlered, with the following exceptions only:

(a) Hunters who are drawn for a quota hunt and/or issued a WMA tag may take deer in addition to the limit; and

(b) Hunters using deer control tags issued to landowners for taking antlerless deer may take a maximum of two (2) antlerless deer in addition to the statewide limit and only as specified in administrative regulation 301 KAR 2:211.

Section 7. Hunter Requirements, Shooting Hours, and Taking of Other Species. (1) Persons under sixteen (16) shall not hunt deer with a gun unless they are accompanied by an adult who shall be able to take immediate control of the juvenile's gun at all times while the juvenile is hunting.

(2) Hunters may be in the woods or stands before daylight, but shall not take, or attempt to take deer except during daylight hours.

(3) Coyotes and wild hogs may be taken during deer season by legal deer hunters only. Wild hogs shall be checked in at an official check station.

(4) Deer shall not be taken with the aid of dogs, or any domestic animal, or from any type of vehicle or boat.

(5) A deer shall not be taken while the deer is swimming.

(6) Any person possessing a deer shall leave the head attached to the body until the deer has been officially checked, as specified in Section 8 of this administrative regulation.

(7) Hunter orange garments shall be worn by all deer hunters while hunting on any location or property where any deer gun season is permitted by administrative regulation. Garments shall be worn as outer coverings on at least the head, chest and back. They shall be of a solid, unbroken pattern. Any mesh weave opening shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color. Camouflage pattern hunter orange garments do not meet these requirements.

(8) On department-controlled wildlife management areas, Westvaco Public Hunting Areas, the Daniel Boone National Forest, Reelfoot National Wildlife Refuge and the Big South Fork National Recreation Area, the use of any nails, spikes, screw-in device, wire or tree climbers shall be prohibited for attaching tree stands or climbing trees. Only portable stands and climbing devices that do not injure trees shall be permitted. Portable stands shall not be placed in trees more than two (2) weeks before opening day of each hunting period and shall be removed within one (1) week following the last day of each hunting period. All portable stands shall be plainly marked with the owner's name and address. Existing permanent tree stands shall not be used.

Section 8. Deer Tagging and Checking Procedures, Transportation and Processing Requirements. All deer taken in Kentucky shall be tagged and officially checked as specified below:

(1) Tagging.

(a) Before moving the deer carcass, the hunter shall attach a valid, adhesive-backed portion of the deer permit, deer control tag or WMA tag to the carcass. This tag shall be attached so that it cannot be removed without destroying the tag or mutilating the carcass. Tags shall remain attached to the carcass until processed.

(b) Following the same requirements stated above in paragraph (a) of this subsection, hunters, except resident landowners, their dependents, and tenants residing and working on the landowner's property, not required to possess a deer permit shall identify their harvested deer by providing their own cards or tags to attach to the deer carcass. Hunters shall write "White Tag" and "Yellow Tag" on two (2) separate cards along with their name and address. After a deer is taken, the hunter shall fill in on the card(s) the date and location (county) where the deer was taken, and attach the appropriate card to the deer before moving the carcass. These two (2) cards shall be used according to the zone and tag restrictions specified in Section 4 of this administrative regulation, in lieu of the deer tag. Resident landowners, their dependents, and tenants residing and working on the landowner's property, shall not be required to place an identifying tag on deer taken on their property unless the deer is removed from their property and taken to another location.

(c) Deer taken in Kentucky shall not be transported outside state boundaries until officially checked. Proof of legal harvest shall accompany any deer, or parts of deer transported into Kentucky.

(d) Any deer entered in trophy deer listings for Kentucky shall be legally harvested within state boundaries.

(e) Deer hides may be sold to licensed fur buyers and licensed fur processors.

(f) All individuals, lockers and plants that process deer shall keep accurate records that include the hunter's name, address and date received for each deer in their possession. Each deer shall also bear a tag provided by the operator/processor stating the above information until the deer is processed. Processors shall not accept deer carcasses without proper owner identification as described.

(2) Checking deer.

(a) All harvested deer, except those taken by resident landowners, their dependents, and tenants residing and working on the landowner's property, shall be officially checked by 9 a.m. on the day after the deer is taken. The entire, or field-dressed carcass shall be taken to the nearest open check station. Check station operators, state conservation officers, or other authorized employees of the department may officially check deer.

(b) Deer shall be checked in by the person who harvested the deer.

(c) Hunters shall fill out, or provide the information required to check station operators to complete an official game check card for each harvested deer. The completed game check card shall be submitted to the check station operator, officer or authorized employee. The hunter's copy of the game check card shall be kept in the hunter's possession until the deer is processed. Parts of deer separated for mounting shall bear the completed taxidermy portion of the hunter's copy of the game check card.

Section 9. Exceptions to Deer Hunting Administrative Regulations for Wildlife Management Areas. All administrative regulations in effect for deer hunting shall apply to wildlife management areas (WMAs), unless otherwise noted in this section. WMAs listed in this section have specific season dates or other additional requirements for deer hunting. When specific periods or season dates are listed for a WMA, deer hunting shall be permitted only on those dates and hunters shall only use the equipment specified. Periods open for the use of muzzleloading guns for deer shall not be in effect on the WMAs listed in this section, unless otherwise noted. On WMAs where a quota hunt is scheduled, no other gun deer hunting shall be permitted, unless otherwise noted in the individual area listing.

(1) Limits: an individual shall take no more than one (1) deer from each of the areas listed in this section, except that two (2) may be taken, as specified from West Kentucky and Higginson-Henry WMAs.

(2) Quota hunt requirements, restrictions and application procedures.

(a) Advance application is required for all quota hunts. Applications shall be made only on Managed Deer Hunt Application form, dated June, 1993, which is hereby incorporated by reference. Copies shall be available to the public, including copying and inspection, by contacting the Wildlife Division offices at #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, except holidays, or by contacting local conservation officers or hunting license vendors. Only one (1) hunter shall apply per form and a maximum of four (4) hunters may apply as a party. Hunters sixteen (16) years old and older may apply to only one (1) quota hunt. Hunters at least ten (10) years old, but not yet sixteen (16) by the scheduled hunt date may apply for only one (1) quota hunt and one (1) youth hunt in addition to the Ballard WMA youth hunt. Multiple applications to one (1) area or failure to meet any of the application requirements described above shall result in disqualification of the applicant. Completed applications shall be stamped, self-addressed and postmarked no later than August 31 unless another date is announced by the commissioner. The application deadline shall be extended by the commissioner when availability of forms is delayed.

(b) Only quota hunt applicants who are drawn and issued a permit shall hunt on quota hunt dates. Quota hunters shall hunt only on the dates assigned and in the areas assigned.

(c) During all quota hunts, only persons possessing a valid quota hunt permit shall be permitted to enter a WMA, except to use established public roads, or other areas designated open by signs. Owners of private inholdings or their guests may travel within the owner's lands, but shall not enter the WMA except as described above.

(d) During a quota hunt or firearm hunt, any legal deer hunting equipment may be used. Hunts listed as archery hunts are restricted to legal archery equipment only. All quota hunters shall check in before and check out at the completion of the hunt.

(e) On the following WMAs, all deer hunters shall check in and check out for all hunts: Clay, Central Kentucky, Dewey Lake, Grayson Lake, Higginson-Henry, Kleber, Paintsville Lake, Pennyrile Forest, Redbird, Tradewater, West Kentucky, Yatesville, Yellowbank WMAs, and for the Barren River Lake WMA youth hunt.

(f) Hunters shall present the signature portion of a valid deer permit, a valid quota hunt permit, show proof of identity and Social Security number when checking in for a quota hunt. No one can substitute for the person whose name appears on the quota hunt permit.

(g) Participants in all quota hunts shall comply with the hunter orange clothing requirements as specified in Section 7(7) of this administrative regulation. When deer hunting on a WMA during periods when only archery equipment is permitted for taking deer on the WMA, the hunter orange clothing requirement shall not apply.

(h) Deer taken during quota hunts shall not count as part of the season limit. Hunters shall use WMA tags, provided by the department, for tagging deer harvested during a quota hunt. WMA tags shall be valid only during the dates and on the WMA for which the tag was issued. Hunters shall take only the type of deer indicated on the WMA tag, if specified.

(i) Owners of private inholdings or their guests may hunt on the owner's lands without following the application procedure specified in Section 9(2)(a), (b) and (c) of this administrative regulation, but shall follow all other quota hunt requirements. Private inholdings shall only be open during the periods listed for the WMA in which they lie, and hunters shall follow all administrative regulations in effect during those periods.

(j) Participants in quota youth hunts shall comply with all hunter education requirements as specified in administrative regulation 301 KAR 2:185 and shall present a valid hunter education course completion card when checking in on the day of the hunt.

(k) Individuals drawn for a quota hunt on Ballard, Dewey Lake, Higginson-Henry, Kleber, Taylorsville Lake and Yellowbank WMAs shall not be eligible to apply to the same area quota hunt for the next three (3) seasons.

(3) Ballard WMA in Ballard County (except that portion south of Terrell Landing Road) quota youth hunt for deer as specified on permit, fourth Saturday in October for two (2) consecutive days and the fifth Saturday in October for (2) consecutive days.

(4) Barren River WMA in Allen and Barren counties.

(a) Quota youth hunt: any deer, second Saturday in October for two (2) consecutive days.

(b) Modern gun, archery and muzzle-loading gun hunting shall conform to statewide administrative regulations.

(5) Beaver Creek WMA in McCreary and Pulaski counties, and Mill Creek WMA in Jackson County.

(a) Archery hunt: antlered deer only, October 15 through the Friday preceding the second Saturday in November and the Monday following the quota hunt through December 31.

(b) Quota hunt: antlered deer only, first Saturday in December for two (2) consecutive days.

(6) Cane Creek WMA in Laurel County.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November and the Monday following the first Sunday in December through December 31.

(b) Gun hunt: antlered deer only, second Saturday in November.

(7) Central Kentucky WMA in Madison County.

(a) Archery hunt: any deer, December 18 through January 15.

(b) No gun deer hunting allowed.

(8) Clay WMA in Nicholas County. Archery hunt: antlered deer only, October 15 through the Friday preceding the second Saturday in November.

(9) Dewey Lake WMA in Floyd County.

(a) Archery hunt: antlered deer only, October 1 through October 14, November 1 through 5, November 8 through 12, November 18 through December 3, and December 6 through 31; any deer, October 15 through October 31.

(b) Quota hunt: antlered deer only, first Saturday in December for two (2) consecutive days.

(c) Youth quota hunt: any deer, first Saturday in November for two (2) consecutive days.

(10) Grayson Lake WMA in Carter and Elliott counties.

(a) Youth quota hunt: any deer, first Saturday in November for two (2) consecutive days and the first Saturday in December for two (2) consecutive days. Only on that portion west of Route 1496, and east of the line delineated by the following: Bruin Creek, the Bruin Creek Fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork. This is the only firearm deer hunting permitted on the area.

(b) Archery and crossbow hunt: any deer, except on the portion west of Route 1496, and east of the line delineated by the following: Bruin Creek, the Bruin Creek Fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork. October 1 through December 31.

(11) Higginson-Henry WMA in Union County.

(a) Quota hunt for deer as specified on permit, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: only antlerless deer may be taken during the period October 1 through 15. Any deer may be taken with the white tag, or an antlerless deer may be taken with the yellow tag during the period October 16 through December 31.

(12) Kleber WMA in Owen and Franklin Counties.

(a) Quota hunt: any deer, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: any deer, third Saturday in October through December 31.

(13) Lapland WMA in Meade County.

(a) Quota hunt: any deer, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: any deer, October 1 through December 31.

(14) Paintsville Lake WMA in Morgan and Johnson Counties.

(a) Quota hunt: antlered deer only, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: antlered deer only, October 1 through November 12, November 23 through December 3 and December 6 through 31.

(15) Pennyrile WMA in Caldwell, Christian, and Hopkins Counties, and Tradewater WMA in Hopkins County.

(a) Quota hunt: antlered deer only, the first Saturday in December for two (2) consecutive days.

(b) Limits: one (1) antlered deer only.

(c) Archery hunting: conforms to statewide administrative regulations except that only antlered deer shall be taken.

(16) Pioneer Weapons WMA in Bath and Menifee Counties.

(a) Legal muzzle-loading gun only; crossbows may be used during the entire archery season.

(b) Muzzle-loading gun hunting shall conform to statewide administrative regulations.

(17) Redbird WMA in Clay and Leslie Counties.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November and the Monday following the first Sunday in December through December 31.

(b) Gun hunt: antlered deer only, two (2) consecutive days beginning the second Saturday in November.

(18) Taylorsville Lake WMA in Anderson and Spencer Counties.

(a) Archery hunt: any deer, October 1 through December 31.

(b) Quota hunt: any deer, first Saturday in November for two (2) consecutive days.

(19) West Kentucky WMA in McCracken County.

(a) Archery hunts: any deer, October 1 through 28, November 18, November 22 through 25, December 6 through 9 and December 13 through January 15 on all tracts except posted zones.

(b) Posted zones: designated posted zones shall be opened to archery hunts on December 13 through January 15.

(c) Quota hunt 1: any deer, third Saturday in November for two (2) consecutive days.

(d) Quota hunt 2: any deer, second Saturday in December for two (2) consecutive days.

(e) Youth quota hunt: any deer, last Saturday in October for two (2) consecutive days.

(f) All gun hunters are limited to muzzle or breech-loading shotguns only.

(g) No firearms permitted on any posted zone at any time.

(h) Crossbow hunt: beginning November 1 and continuing for fourteen (14) consecutive days.

(i) Limits: two (2) deer, one (1) of which shall be antlerless and tagged with the yellow or white tag, the other deer may be antlered or antlerless and tagged with a WMA tag issued on the area. Only one (1) WMA tag shall be issued to an individual. A bowhunter who has taken a deer on this WMA with a WMA tag shall not hunt in the quota hunt.

(20) White City WMA in Hopkins County.

(a) Archery hunt: October 1 through December 31.

(b) Quota hunt 1: the second Saturday in November through the following Wednesday.

(c) Quota hunt 2: the Thursday following the second Saturday in November through the following Monday.

(d) Limit: one (1) deer.

(21) Yellowbank WMA in Breckinridge County.

(a) Quota hunt: any deer, first Saturday in November for two (2) consecutive days.

(b) Archery hunt: antlered deer only October 1 through 14 and any deer, October 15 through December 31.

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

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: August 9, 1993

FILED WITH LRC: August 10, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1993 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 18, 1993, 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 canceled. 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, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: An estimated 211,000 persons will participate in the white-tailed deer hunting proposed by this administrative regulation.

(a) Direct and indirect costs or savings to those affected: These costs involve the purchase of a state hunting license and a deer permit. Indirect costs are determined by the individual hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this administrative regulation would be required to possess a valid hunting license ($12.50 for residents) and a deer permit ($21.50) unless exempt by administrative regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Deer hunters will be asked to check their deer at a county deer check station and fill out a game check card denoting specific information about the deer.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs and savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this administrative regulation is $1,000,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Approximately 211,000 deer hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $25 per day of hunting according to the 1980 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 populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(6) Any additional information or comments: None

TIERING: Was tiering applied: Yes. Special seasons, limits and hunting procedures are recognized for various zones and land holdings based on deer availability and other user 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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. 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 Clerks office serves as

a distribution system for the hunting licenses required by this administrative regulation. The District Courts are where violators of these administrative regulations are prosecuted.

4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in sale of hunting licenses and deer tags. This office receives a $.50/license fee for selling the licenses. The District Courts are utilized for prosecution of cases made against violators of these administrative regulations and recover their costs as the court cost portion of any levied fines.

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

301 KAR 3:030. Year-round season for some birds and animals.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.330, 150.360, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025, 150.170, 150.360

NECESSITY AND FUNCTION: This administrative regulation pertains to the open season for unprotected species of wild birds and wild animals. [~~Since all wildlife is protected unless declared unprotected,~~] This administrative regulation is necessary to establish the species that can be hunted year-round, and to insure that only those species [~~declared~~] unprotected (except crow) may be taken by the use of hand, or mouth, mechanically or electronically operated calling or attracting devices. The function of this administrative regulation is to furnish sport and recreation while utilizing wildlife species that sometimes create a nuisance or a health hazard. This administrative regulation enacts a closure for hunting some species in early November. The purpose of this amendment is to remove hunting restrictions imposed by this administrative regulation from November 1 to midnight on the day of deer gun season closure so that the issue may be handled in other species specific season administrative regulations.

Section 1. The following species of wild birds and wild animals may be taken, pursued, possessed or transported all year except as stated in Section 3 of this administrative regulation, by any person possessing a valid hunting license: coyote, woodchuck, [~~crow,~~] English sparrow and starling.

Section 2. Unprotected wild animals. All species of moles, mice, rats, shrews, terrestrial invertebrates, snake and lizards, except those which may be protected as rare or endangered species under the provisions of 301 KAR 3:061, are unprotected and may be taken without possessing a hunting license. All other wild birds and wild animals are protected except during open season and as specified by other administrative regulations.

Section 3. Closed season. There shall be a closed season on all species of wild birds and wild animals, protected or unprotected, unless opened by other administrative regulations, from November 1 to midnight on the day of the closure of statewide deer gun season, except that coyotes may be taken during this period by deer hunters, only as specified in administrative regulations 301 KAR 2:047, 301 KAR 2:111 and 301 KAR 2:170. This does not prohibit tenants residing on the land, nor landowners from killing wildlife which is causing damage to persons or property on their land.

Section 4. Except as otherwise provided by administrative regulation, only those birds and animals listed in Section 1 of this administrative regulation may be taken by the use of hand or mouth calling or attracting devices, or mechanically or electronically operated calling or attracting devices during daylight hours only.

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: June 15, 1993
FILED WITH LRC: July 29, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. 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, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license. Indirect costs would be determined by the hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this administrative regulation would be required to possess a valid hunting license ($12.50 for residents) unless exempt by administrative regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs and savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this administrative regulation is $140,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about $204 a season on food, lodging, transportation and equipment. This will add about $18,360,000 to the income of local businesses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be

through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None known

(a) Necessity of proposed administrative 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. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Ch. 1 (10/01/91)/ Part 20/ Page 295/ Para. 20.133, and 50 CFR Ch. 1 (10/01/91)/ Part 21/ Page 321/ Para. 21.43.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Crow - season may not be scheduled to occur during the peak nesting period within the state (March - June) with a 124 day maximum season length.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures.

COMMERCE CABINET
Department of Agriculture
Division of Hay and Grain
(Proposed Amendment)

302 KAR 37:010. Standard hay grading program.

RELATES TO: KRS 260.010

STATUTORY AUTHORITY: KRS 260.033

NECESSITY AND FUNCTION: To define terms used in the administration of the Kentucky standard hay grading program and establish methods of sampling, testing and grading hay to be applied to the Kentucky standard hay grading program.

Section 1. Terms used in the administration of the hay marketing law and regulations and not otherwise defined shall have the following meaning.

(1) The term "acid detergent fiber" means the portion of hay that is highly indigestible.

(2) The term "available protein" means an adjustment in crude protein value determined by subtracting the degree of heat damage from the crude protein level.

(3) The term "crude protein" means the portion of hay that contains true protein and nonprotein nitrogen.

(4) The term "department" means the Kentucky Department of Agriculture.

(5) The term "digestible dry matter" means the estimated percent of hay that is digestible.

(6) The term "dry matter" means the portion of hay which is not water.

(7) The term "dry matter intake" means an estimate of the maximum amount of hay a lactating cow will eat.

(8) The term "grading" means to classify hay by its relative feed value and physical characteristics.

(9) The term "hay" means grass, alfalfa, clover or other forage crops cut and dried for use as livestock feed.

(10) The term "heat damage protein" means the portion of hay chemically linked to carbohydrates to form an indigestible compound.

(11) The term "injurious foreign material" means anything which has infected hay to make it undesirable or unfit to eat, such as noxious weeds, rocks, wires, or glass matter.

(12) The term "kind" means one (1) or more related species or subspecies which singularly or collectively is known by one (1) common name, for example, alfalfa, red clover and timothy.

(13) The term "lot" means hay taken from the same cutting at the same stage of maturity, the same kind, the same field and harvested within forty-eight (48) hours.

(14) The term "mold" means a downy growth on the surface of hay caused by the presence of dampness or decay.

(15) The term "neutral detergent fiber" means the portion of hay that is only partially digestible and limits intake.

(16) The term "probe" means a hollow, metal tube used to extract samples from hay.

(17) The term "relative feed value" means a combination of digestible dry matter and dry matter intake that is used to evaluate the feed value of hay under a calculation of multiplying the percentage of digestible dry matter times the percentage of dry matter intake and then dividing that number by 1.29.

(18) The term "sampler" means an individual who takes samples of hay for testing.

(19) The term "total digestible nutrients" means the digestible components of fiber, protein, fat and nitrogen-free extract in the diet.

(20) The terms used in reference to mineral content in hay shall be the official feed terms adopted by the Association of American Feed Control Officials and published in its official publication.

Section 2. The method of sampling hay shall be the following:

(1) For rectangular bales, probe shall be inserted in the end of the bale at a point approximately one-half (1/2) the distance from the center to the outside of the bale and drilled or pushed horizontally at least eleven (11) inches into the bale.

(2) For round bales, probe shall be inserted in the end of the bale at a point approximately one-half (1/2) the distance from the center to the outside of the bale and drilled or pushed at least eleven (11) inches into the bale.

(3) At least twenty (20) bales shall be sampled and composited to develop one (1) sample per lot. If a lot contains less than twenty (20) bales, all bales shall be sampled.

(4) Bales within a lot of hay shall be sampled at random by taking into account vertical and horizontal positions within the lot.

(5) Each bale sampled shall be tagged or marked with colored chalk or vegetable dye

(6) Samples from a lot of hay shall be composited and placed in a plastic freezer bag and sealed tightly.

(7) The department shall keep samples from a lot of hay for a period of at least one (1) year.

Section 3. The testing of hay shall be performed by procedures adopted by the National Alfalfa Hay Testing Association and published at page 17 in its "Hay Testing Laboratory Certification Manual, Publication No. 2, February 10, 1986," which is hereby adopted by reference. A copy of the Hay Testing Laboratory Certification Manual may be obtained at the Division of Hay and Grain, 106 West Second Street, Frankfort, Kentucky 40601. The manual may be inspected or copied at the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday.

Section 4. The grading of hay shall be based on the findings of a test performed by Near Infrared Reflectance Spectroscopy, or any other procedure which has the approval of the Association of Official Agricultural Chemists, and the test result shall include analysis under the categories of "As Received Basis" and "Dry Matter Basis" of the following:

(1) Moisture;
(2) Dry matter;
(3) Crude protein;
(4) Heat damaged protein;
(5) Available protein;
(6) Digestible protein;
(7) Acid detergent fiber;
(8) Neutral detergent fiber;
(9) Relative feed value;
(10) Phosphorous (P);
(11) Calcium (Ca);
(12) Potassium (K);
(13) Magnesium (MG).

Section 5. The grading of hay also shall be based on a physical description of the hay provided by those who take samples for testing; the description shall be listed on the test result and shall include the following:

(1) Color;
(2) Foreign material;
(3) Injurious foreign material;
(4) Odor;
(5) Mold.

Section 6. Testing results shall be stated in a uniform manner as prescribed by the department.

Section 7. The grade of "Triple Crown" shall apply to hay in which the physical description is "light green", "green" or "dark green" in color, the odor is "fresh" and there is no mold and no injurious foreign material that is identifiable by a visual inspection.

Section 8. The grade "Kentucky Pride" shall apply to hay in which the test analysis for crude protein exceeds fourteen (14) percent on a dry matter basis and the test analysis for relative feed value exceeds 124 and the physical description indicates no visible injurious foreign material.

Section 9 The grade "Kentucky Feeder" shall apply to hay in which the test analysis for crude protein is between eight (8) percent and fourteen (14) percent or [~~and~~] the test analysis for relative feed value is between seventy-five (75) and 124 and the physical description includes no visible injurious foreign material.

Section 10. No grade shall be applied to hay that is not graded as "Triple Crown" or "Kentucky Pride" or "Kentucky Feeder."

Section 11. All hay testing laboratories used in the Kentucky standard hay grading program may annually run a series of samples which will then be analyzed by wet chemistry by the University of Kentucky, College of Agriculture, Department of Agronomy to insure consistent readings for Kentucky forages. [~~shall be certified by the National Hay Association under procedures outlined in the association's publication at page 5, "Hay Testing Laboratory Certification Manual, Publication No. 2, February 10, 1986."~~]

Section 12. All persons who take samples of hay for testing under the Kentucky standard hay grading program shall be certified by the department and shall receive a certification card issued by the department after having successfully completed the following:

(1) The taking of samples from ten (10) lots of hay according to the procedures outlined by the National Hay Association in its publication at page 9, "Hay Testing Laboratory Certification Manual, Publication No. 2, February 10, 1986."

(2) At least forty (40) hours of instruction, from the director of the department's Hay and Grain Division or a person who has been certified to sample, on properly recognizing the physical characteristics (color, mold, foreign material, type, stage of maturity) of hay.

Section 13. Upon application to the department, individuals who want to take samples of hay on behalf of hay growers' associations and cooperatives may be certified by the department and issued a certification card.

Section 14. The department may allow laboratories that are certified by the National Hay Association to test hay under the guidelines of the Kentucky standard hay grading program.

Section 15. The director of the department's Hay and Grain Division or the Commissioner of Agriculture may revoke certification of samplers and laboratories which do not follow the sampling and testing procedures of the Kentucky standard hay grading program. Certification may be revoked for failure to follow the procedures and requirements outlined in this regulation, provided that the certification holder is given ten (10) days written notice of the reason for revocation.

Section 16. Any party aggrieved by a notice of revocation of certification may appeal the department's decision to revoke the certification by filing an appeal with the Department of Agriculture, Division of Hay and Grain, within ten (10) days of the date of notification of revocation.

(1) There will be a hearing committee available within the Division of Hay and Grain at all times to hear complaints by aggrieved parties and to decide whether to revoke a certification for violation of procedures or requirements set forth in the regulations.

(2) The hearing committee will hear each appeal and rule upon each cause for revocation.

Section 17. Hay that is sampled and tested shall be stored in the Commonwealth of Kentucky.

(1) Hay that is sampled and tested shall have recorded by the department the date of cutting and the date of sampling.

(2) Hay that is sampled and tested shall be grouped in a lot that does not exceed a weight of fifty (50) tons.

(3) Upon application by a producer, a second test on a "lot" of hay shall be performed under the following guidelines: A certified sampler who did not take the first sample from the lot of hay shall take the second sample from at least the bales that were previously

sampled and tagged or marked with colored chalk.

Section 18. Within ten (10) working days after a sample is taken, the department or any laboratory certified by the department to test hay shall mail to the producer an analysis report containing the test results, an identification of the hay's producer and type of hay and its location and the date the hay was tested.

(1) The most recent analysis report on a lot of hay shall be the report of record.

(2) The department or any laboratory certified by the department to test hay shall keep for a period of one (1) year, records of the analysis report for each lot of hay tested.

Section 19. If hay meets the requirements for the grades of "Triple Crown", "Kentucky Pride," or "Kentucky Feeder", the department or any laboratory certified by the department to test hay shall affix a label to the analysis report indicating that the hay is graded as such.

Section 20. Individuals who are certified to take samples of hay for testing under the Kentucky standard hay grading program shall collect a fee of ten (10) dollars for each lot of hay sampled and tested at the time the hay is sampled for testing. The ten (10) dollar fee shall be refunded to the producer if the hay is not tested within ten (10) working days after the hay is sampled.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: July 27, 1993

FILED WITH LRC: July 27, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Tuesday, September 21, 1993 at 1 p.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Donna Greenwell Dutton, General Counsel Department of Agriculture, Capital Plaza Tower, 7th Floor 500, Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Buddy Sims

(1) Type and number of entities affected: All persons involved with Kentucky hay growing.

(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 completion): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(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: See above.

(6) Any additional information or comments: N/A

Was tiering applied? No. This administrative regulation treats all persons involved with hay growing in Kentucky the same.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 50:035. Permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.10-120, 401 KAR Chapters 50 through 65, 40 CFR Parts 52, 60, 70, 72, 73, 75, 77, 78, 42 USC 7401-7671q, July 21, 1993 Federal Register (57 FR 32250)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as otherwise provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 42 USC 7651 through 7651o and 40 CFR Parts 72, 73, 75, 77, and 78. 40 CFR Parts 72, 73, 75, 77, and 78 are incorporated by reference in Section 10 of this administrative regulation.

(2) "Act" means the Clean Air Act promulgated at 42 USC 7401 through 7671q, as amended by PL 101-549 (November 15, 1990).

(3) "Administrative permit amendment" means a revision to a permit that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source if the cabinet determines that no other change in the permit is necessary and if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the cabinet;

(e) Allows a source to voluntarily modify or replace its air pollution control equipment to provide an equivalent or more efficient control of air pollutants, if the source is not required to modify or replace the control equipment to comply with an administrative regulation or a permit condition.

(f) Incorporates into the permit the requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those prescribed in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision, and compliance require-

ments substantially equivalent to those contained in Section 4(3) of this administrative regulation.

(4) "Affected source" means a source that includes one (1) or more affected units.

(5) "Affected states" means those states:

(a) That border Kentucky and whose air quality may be affected by the proposed issuance, revision, or renewal of a permit subject to the federally enforceable requirements of this administrative regulation; or

(b) That are within fifty (50) miles of the proposed permitted source.

(6) "Affected unit" means a unit that is subject to the acid rain program.

(7) "Applicable requirement" means any of the following:

(a) A federally enforceable requirement;

(b) A state-origin requirement or standard; or

(c) A permit requirement to use all available, practical, and reasonable methods to prevent and control air pollutants, if emission standards have not been prescribed in an administrative regulation.

(8) "Complete application" means an application for a permit or permit revision that meets the requirements of Section 3(1)(b) of this administrative regulation.

(9) "Designated representative" means a responsible person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program. The term "responsible official," as used in this administrative regulation or in administrative regulations implementing the acid rain program, means the "designated representative."

(10) "Draft permit" means the version of a permit which the cabinet offers for public participation and affected state review as prescribed in Sections 7 and 8 of this administrative regulation.

(11) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(12) "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038.

(13) "Emissions unit" means a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant. This term does not alter or affect the definition of the term "unit" as used in the acid rain program.

(14) "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to the effective date of this administrative regulation, or source that is authorized by the cabinet to operate on or before the effective date of this administrative regulation.

(15) "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision.

(16) "Federally enforceable requirement" means all of the following as they apply to emissions units at a source which is subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:

(a) Standards or requirements in the State Implementation Plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 USC 7401 thorough 7515 (Title I of the Act).

(c) A standard or other requirement promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7429 (Section 129 of the Act).

(d) A national emission standard for hazardous air pollutants (NESHAP) promulgated pursuant to 42 USC 7412 (Section 112 of the Act), including a requirement for accidental release prevention pursuant to 42 USC 7412(r) (Section 112(r) of the Act).

(e) Standards or requirements of the acid rain program.

(f) Requirements established pursuant to 42 USC 7661c(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification.

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661c(e) (Section 504(e) of the Act).

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act).

(i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act).

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 through 7671q (Title VI of the Act), unless the U.S. EPA determines that those requirements need not be contained in the permit.

(17) "Final permit" means:

(a) For a federally enforceable permit, the version of a permit issued by the cabinet that has completed all the review procedures required in Sections 7 through 9 of this administrative regulation and for which a final determination has been made.

(b) For a state-origin permit, the version of a permit which meets the applicable provisions of this administrative regulation and for which a final determination has been made.

(18) "Fugitive emissions" means those emissions which do not pass through a stack, chimney, vent, or other functionally-equivalent opening.

(19) "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.

(20) "Major source" means a stationary source, or a group of stationary sources, that are located on one (1) property or two (2) or more contiguous properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping which emits a regulated air pollutant and which is described in paragraphs (a), (b), or (c) of this subsection.

(a) A major stationary or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant listed in 401 KAR 57:061 or twenty-five (25) tons per year or more of a combination of hazardous air pollutants listed in 401 KAR 57:061, or a lesser quantity established by the U.S. EPA and promulgated in an administrative regulation in 401 KAR Chapter 57. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources; or

(b) A stationary source of air pollutants that directly emits or has the potential to emit, 100 tons per year or more of an air pollutant. The fugitive emissions of a stationary source shall be considered in determining if it is a major source only if it belongs to one (1) he following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;

7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plant;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or
27. All other stationary source categories subject to an administrative regulation in 401 KAR Chapters 59 and 61 which are promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or a national emission standard for hazardous air pollutants (NESHAP) in 401 KAR Chapter 57, promulgated pursuant to 42 USC 7412 (Section 112 of the Act).

(c) A stationary source located in an area designated nonattainment pursuant to 401 KAR 51:010, including:

1. For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;"
2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and
3. For particulate matter (PM_{10}) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM_{10}.

(21) "Minor source" means a stationary source that is required to obtain a permit pursuant to this administrative regulation and that is not a major source.

(22) "Permit revision" means a minor permit revision, a significant permit revision, or an administrative permit amendment.

(23) "Phase II" means the acid rain program period beginning January 1, 2000, and continuing thereafter.

(24) "Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air 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 is enforceable by the U.S. EPA. This term does not alter or affect the use of this term for other purposes in the Act, or the term "capacity factor" as used in the acid rain program.

(25) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(26) "Regulated air pollutant" means the following:

(a) Nitrogen oxides;
(b) Volatile organic compounds;
(c) A pollutant for which an ambient air quality standard has been promulgated in 401 KAR 53:010;
(d) A pollutant that is subject to a standard promulgated pursuant to 42 USC 7411 and 7412 (Sections 111 and 112 of the Act);
(e) A pollutant listed in 401 KAR 57:061; and
(f) A pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.

(27) "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 5(6) of this administrative regulation.

(28) "Responsible official" means one (1) of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or
2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA); or

(d) For affected sources, the designated representative.

(29) "Significant permit revision" means a permit revision required to be processed pursuant to Section 6(2)(c) of this administrative regulation.

(30) "State implementation plan (SIP)" means the most recently prepared plan or revision required by 42 USC 7410 (Section 110 of the Act) which has been submitted by the cabinet and approved by the U.S. EPA.

(31) "State-origin permit" means a permit that contains only state-origin permit conditions. If the permit contains one (1) or more federally enforceable permit conditions it is a federally enforceable permit.

(32) "State-origin permit condition" means a provision in the permit that is not required pursuant to 42 USC 7401 through 7671q (the Act) or any of the Act's applicable requirements, and that is not federally enforceable.

(33) "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated air pollutant.

(34) "Timely application" means an application that meets the requirements of Section 3(1)(a) of this administrative regulation.

Section 2. Applicability. This administrative regulation shall apply to owners and operators of all air pollution sources, except as follows:

(1) A source shall be exempt from this administrative regulation if:

(a) The source is not subject to an applicable requirement; or
(b) The source has uncontrolled emissions of less than twenty-five (25) tons per year and potential emissions of five (5) tons per year or less of a pollutant for which an ambient air quality standard is listed in 401 KAR 53:010, or less than the significant net emissions rate pursuant to 401 KAR 51:017, whichever is less; and
(c) The source has potential emissions of less than the exempting value provided in an administrative regulation in 401 KAR Chapter 57 or less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061 if an exempting value is not

given in 401 KAR Chapter 57.

(2) The following sources and activities shall also be exempt from this administrative regulation, but they shall not be exempt from compliance with applicable standards in other administrative regulations in 401 KAR Chapters 50 through 63. The cabinet may require the owner or operator to demonstrate compliance with all applicable administrative regulations.

(a) An asbestos source which is subject only to the provisions of 401 KAR 58:020, Section 6.

(b) A source which is subject only to the provisions of 40 CFR Part 60, Subpart AAA.

(c) An incinerator with a charging rate of less than 500 pounds per hour, unless it is subject to an administrative regulation in 401 KAR Chapters 50 through 63.

(d) An internal combustion engine, except as provided in 401 KAR 59:019.

(e) A vehicle used for the transport of passengers or freight.

(f) A direct-fired source used for heating and ventilating.

(g) A source subject only to the provisions of 401 KAR 63:005.

(h) One (1) or more indirect heat exchangers, with a rated total heat input capacity of less than fifty (50) million BTU per hour which use natural gas or liquid petroleum gas as a main fuel and which use only distillate fuel oil as a standby fuel, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(i) An individual addition of a natural gas or liquid petroleum gas-fired boiler having an individual rated heat input capacity of less than fifty (50) million BTU per hour, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(j) A publicly owned road.

(k) A feed grain mill having a hammermill with a rated capacity of ten (10) tons per hour or less, if the source does not include a grain dryer.

(l) A sawmill which produces only rough cut or dimensional lumber from logs and which has a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an administrative regulation in 401 KAR Chapters 59 or 61.

(m) The installation of air pollution control equipment where none is required. The owner or operator may be required to submit an application for a permit.

(n) Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to an administrative regulation.

Section 3. Permit Applications. (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this section using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. The cabinet may provide methods for electronic transmission of the completed application.

(a) Timely applications.

1. An existing major source shall file a complete application for a permit within twelve (12) months after becoming subject to this administrative regulation or within twelve (12) months after the effective date of this administrative regulation, whichever date is later.

2. An existing minor source shall file a complete application for a permit within twelve (12) months after becoming subject to this administrative regulation or within fifty-four (54) months after the effective date of this administrative regulation, whichever date is later.

3. An existing source which is required to have a state-origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to this administrative regulation or within sixty (60) months after the effective date of this administrative regulation, whichever date is later.

4. A source constructing, reconstructing, or modifying after the effective date of this administrative regulation shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, or modification.

5. A source that is required to open an existing permit pursuant to the requirements of Section 6(3) of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after notification by the cabinet that the permit shall be reopened.

6. For permit renewal, a timely application shall be submitted at least six (6) months prior to the date of permit expiration and in accordance with Section 5(6) of this administrative regulation.

7. Applications for initial Phase II acid rain permits shall be submitted to the cabinet by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(b) Complete application.

1. To be deemed complete, an application shall provide all information required pursuant to subsection (3) of this section, except that applications for a permit revision shall supply the information only if it is related to the proposed change. This information shall be sufficient to evaluate the source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information pursuant to subsection (4) of this section.

2. Unless the cabinet determines, and notifies the source, within sixty (60) days after receipt that an application is not complete, the application shall be deemed complete, except as provided in subparagraphs 3 and 4 of this paragraph.

3. If, while processing an application, the cabinet determines that additional information is necessary, it may request the information in writing and set a reasonable deadline for response.

4. For permit revisions processed through minor permit revision procedures, pursuant to Section 6(2)(a) of this administrative regulation, a completeness determination shall not be required.

(c) Confidential information. A source that submits to the cabinet an application for a federally enforceable permit containing a claim of confidential information shall authorize the cabinet to submit the information to the U.S. EPA, or shall submit a copy of the information directly to the U.S. EPA.

(2) Duty to supplement or correct application. An applicant who fails to submit relevant facts or who has submitted incorrect information in a permit application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information. The applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it filed a complete application but prior to issuance of a draft permit. Failure to supplement or correct the application shall be a violation of this administrative regulation and shall cause the source to be subject to applicable penalties, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

(3) Standard application form and required information.

(a) Applications for required permits shall be made on Form DEP 7007 which is incorporated by reference in 401 KAR 50:034. The applicant may submit the application using computer software if the cabinet has provided for the electronic preparation of applications.

(b) An application shall include all information needed to determine the applicability of or to impose an applicable requirement and to evaluate the required fee amount pursuant to 401 KAR 50:038.

(c) The application and attachments shall include the company name and address or, if different, the plant name and address; owner's and agent's name and address; name, address, and telephone number of the plant site manager or contact; a description of the source's processes and products by Standard Industrial Classification (SIC) Code, which is incorporated by reference in 401 KAR 51:017, including any associated with alternate scenarios identified by the source; and all of the elements specified in paragraphs (d) through (j) below:

(d) The application shall provide the following emissions-related information:

1. All emissions for which the source is major and all emissions of regulated air pollutants. A permit application shall describe all

emissions of regulated air pollutants emitted from an emissions unit, unless the units are exempted in this subsection. The applicant shall also provide any additional information related to the emissions of air pollutants necessary to verify which requirements are applicable to the source, and other information necessary to collect permit fees owed under the fee schedule approved pursuant to 401 KAR 50:038.

a. For major sources, the applicable requirements for all emissions units shall be identified in the permit application.

b. For minor sources, all applicable requirements for the emissions units that cause the source to be subject to this administrative regulation shall be identified in the permit application.

c. Fugitive emissions from a source shall be identified in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(20)(b) of this administrative regulation.

2. Identification and description of all points of emissions described in subparagraph 1 of this paragraph in sufficient detail to establish the basis for fees and applicable requirements.

3. Emissions rates in tons per year and in terms necessary to establish compliance consistent with the applicable standard reference test method. These methods are incorporated by reference in 401 KAR 50:015 or in the applicable administrative regulations.

4. Fuels, fuel use, raw materials, production rates, and operating schedules, if needed to determine or limit emissions.

5. Identification, description, and operating parameters of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, if applicable, for all regulated air pollutants at the source.

7. Other information required by an applicable requirement, including information related to stack height limitations developed pursuant to 401 KAR 50:042.

8. Calculations on which the information in subparagraphs 1 through 7 of this paragraph is based.

(e) The application shall identify the following air pollution control requirements:

1. Citation and description of all applicable requirements; and

2. Description of or reference to the applicable test method for determining compliance with each applicable requirement.

(f) The application shall provide other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of these requirements.

(g) The application shall provide an explanation of proposed exemptions from otherwise applicable requirements.

(h) The application shall provide additional information required by the cabinet to define alternative operating scenarios identified by the source pursuant to Section 4(1)(i) of this administrative regulation, or to define permit terms and conditions implementing Section 4(1)(j) of this administrative regulation.

(i) The application shall provide a compliance plan containing the following:

1. A description of the compliance status of the source for all applicable requirements as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements.

b. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with those requirements.

2. A compliance schedule as follows:

a. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the applicable requirement.

b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

3. A schedule for submission of certified progress reports, pursuant to Section 4(3)(d) of this administrative regulation, no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

4. In Phase II of the acid rain program, the compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as provided in the acid rain program for the schedule and method the source will use to achieve compliance with the acid rain emissions limitations.

(j) The application shall identify requirements for compliance certification, including the following:

1. A certification of compliance with all applicable requirements by a responsible official pursuant to subsection (4) of this section;

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and

4. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.

(4) Certification by responsible official. Application forms, reports, and compliance certifications submitted pursuant to this administrative regulation shall contain a certification by a responsible official, as defined in Section 1(28) of this administrative regulation, of truth, accuracy, and completeness. The certifications required in this administrative regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Section 4. Permit Content. (1) Standard permit requirements. A permit issued pursuant to this administrative regulation shall include the following elements:

(a) Emission limitations and standards, including operational requirements and limitations that assure compliance with applicable requirements at the time of permit issuance. This shall include:

1. The origin of and authority for each term or condition, and any variation from the applicable requirement upon which the term or condition is based;

2. A statement that the source shall comply with all applicable requirements;

3. If the SIP allows the determination of an alternative emission limit that is equivalent to the limit contained in the plan to be made in the permit issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination shall contain conditions to ensure that the resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures;

4. For major sources, all applicable requirements for emissions units;

5. For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation; and

6. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(20)(b) of this administrative regulation.

(b) Permit duration and renewal. A statement shall be included which provides that the permit shall expire and shall be renewed pursuant to Section 5(6) of this administrative regulation.

(c) Monitoring and related recordkeeping and reporting requirements.

1. Each permit shall contain the following monitoring requirements:

a. All emissions monitoring and analysis procedures or test methods required in the applicable requirements;

b. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit, as reported pursuant to subparagraph 3 of this paragraph. Monitoring requirements shall assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this sentence; and

c. Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate.

2. Each permit shall incorporate the following recordkeeping requirements, if applicable:

a. Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The dates analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of analyses; and

(vi) The operating conditions at the time of sampling or measurement;

b. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

3. Each permit shall incorporate the following reporting requirements, if applicable:

a. Submittal of required monitoring reports at least every six (6) months. All deviations from permit requirements shall be clearly identified in the reports, and all reports shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

b. The cabinet shall be notified immediately of deviations from permit requirements, including those attributed to upset conditions as defined in the permit, the probable cause of the deviations, and corrective actions or preventive measures taken. A written report shall be filed with the cabinet within ten (10) days of the deviation.

(d) A permit condition prohibiting emissions exceeding allowances that the source lawfully holds in the acid rain program.

1. A permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the acid rain program if the increases do not require a permit revision in another applicable requirement.

2. A limit shall not be placed on the number of allowances held by the source. However, a source shall not be allowed to use allowances in defense of noncompliance with an applicable requirement.

3. Allowances shall be accounted for according to the procedures established in 40 CFR Part 73, which is incorporated by reference in Section 10 of this administrative regulation.

(e) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit.

(f) Provisions stating the following:

1. The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and shall cause the source to be subject to applicable penalties, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.

3. The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.

4. The permit shall not convey property rights or exclusive privileges.

5. The permittee shall furnish to the cabinet information that the cabinet may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the cabinet copies of records required to be kept by the permit.

(g) A provision to ensure that the source shall pay the fees to the cabinet pursuant to the approved fee schedule in 401 KAR 50:038.

(h) Emissions trading. A permit revision shall not be required in approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(i) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the cabinet. The terms and conditions:

1. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario in which it is operating;

2. May extend the permit shield described in subsection (6) of this section to all terms and conditions in each operating scenario; and

3. Shall ensure that the terms and conditions of each alternative scenario meet all applicable requirements.

(j) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading increases and decreases without a case-by-case approval of each emissions trade. The terms and conditions:

1. Shall include all terms required in subsections (1) and (3) of this section to determine compliance;

2. May extend the permit shield described in subsection (6) of this section to all terms and conditions that allow increases and decreases in emissions; and

3. Shall meet all applicable requirements and the requirements of this administrative regulation.

(2) Federally enforceable requirements. The cabinet shall include a notification in a federally enforceable permit that all terms and conditions in the permit, except the provisions that are specifically designated as state-origin permit conditions, shall be enforceable by the U.S. EPA and citizens.

(3) Compliance requirements. All permits shall contain the following elements for compliance:

(a) Pursuant to subsection (1)(c) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

(b) Requirements that the permittee shall allow the cabinet or an authorized representative to perform the following:

1. Enter the premises of a source to inspect any emissions-related activity or records required in the permit;

2. Have access to and copy records required by the permit;

3. Inspect facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required in the permit; and

4. Sample or monitor substances or parameters to assure compliance with the permit or any applicable requirements.

(c) A schedule of compliance as required in Section 3(3)(i)2 of this administrative regulation.

(d) Progress reports on the schedule of compliance required in paragraph (c) of this subsection to be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the cabinet. Progress reports shall contain the following:

1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance were achieved; and

2. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.

(e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

1. The frequency, as specified in an applicable requirement or by the cabinet, of submissions of compliance certifications (must be at least annually);

2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

3. A requirement that the compliance certification include the following:

a. The identification of each term or condition of the permit that is the basis of the certification;

b. The compliance status;

c. Whether compliance was continuous or intermittent;

d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(c) of this section; and

e. Other facts as the cabinet may require to determine the compliance status of the source;

4. A requirement that all compliance certifications be submitted to the U.S. EPA as well as to the cabinet; and

5. Additional requirements for monitoring and compliance certification, if specified by the cabinet.

(f) A specific condition that the source shall not be allowed to operate unless it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 5(3) of this administrative regulation, or is operating in accordance with a compliance plan which has met the applicable review requirements in Sections 7 through 9 of this administrative regulation.

(g) Other provisions required by the cabinet.

(4) General permits.

(a) The cabinet may, after notice and opportunity for public participation provided in Section 7 of this administrative regulation, issue a general permit covering numerous similar sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the cabinet shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in subsection (6) of this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the acid rain program.

(b) Sources that qualify for a general permit shall apply to the cabinet for coverage under the terms of the general permit or shall apply for a permit pursuant to Section 3 of this administrative regulation. The general permit application shall meet the requirements of this administrative regulation and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The cabinet may grant a source's request for a general permit without repeating the public participation procedures required in Section 7 of this administrative regulation. If the cabinet determines that the source does not meet the criteria for a general permit, the permit application shall be processed pursuant to the requirements of Section 3 of this administrative regulation.

(5) Temporary sources. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one (1) change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include the following:

(a) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(b) Requirements that the owner or operator notify the cabinet at least ten (10) days in advance of each change in location; and

(c) Conditions that assure compliance with all other provisions of this administrative regulation.

(6) Permit shield.

(a) Except as provided in this administrative regulation, compliance with the conditions of the permit shall be deemed compliance with the applicable requirements as of the date of permit issuance, if:

1. The applicable requirements are included and are specifically identified in the permit; or

2. The cabinet, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(c) Nothing in this subsection or in a permit shall alter or affect the following:

1. 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;

2. The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;

3. The applicable requirements of the acid rain program; or

4. The ability of the U.S. EPA to obtain information from a source pursuant to 42 USC 7414 (Section 114 of the Act).

(7) Emergency provision.

(a) Effect of an emergency. An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the conditions in paragraph (b) of this subsection are met.

(b) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An emergency occurred and the permittee can identify the cause of the emergency;

2. The permitted facility was at the time being properly operated;

3. During the period of the emergency the permittee took all reasonable steps, as expeditiously as practicable, to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

4. The permittee notified the cabinet immediately and submitted written notice of the emergency to the cabinet within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of subsection (1)(c)3b of this section, and shall contain a description of the emergency, steps taken to mitigate emissions, and corrective actions

taken.

(c) In an enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.

(d) This provision is in addition to any emergency or upset provision contained in an applicable requirement.

Section 5. Permit Issuance and Renewal. (1) A person shall not construct, reconstruct, modify, or operate a source without a permit as required by this section.

(a) Permit issuance.

1. The cabinet shall issue a draft permit after the provisions of subsection (2)(a) and (b) of this section have been met.

2. The cabinet shall issue a proposed permit after the provisions of subsection (2)(a) through (d) of this section have been met.

3. The cabinet shall make a determination regarding the issuance of a final permit after the provisions of subsection (2)(a) through (e) of this section have been met.

(b) A permit application submitted by an existing source which is deemed complete prior to the effective date of this administrative regulation may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete.

(c) For an existing source that is required to have a federally enforceable permit, the following provisions shall apply:

1. A source may operate on the basis of its existing permit or an order issued by the cabinet until it is scheduled to submit a timely application.

2. If the source fails to submit a timely application, or if the source fails to submit additional information requested by the cabinet pursuant to Section 3(1)(a)3 of this administrative regulation, the source shall not operate except in compliance with a final permit.

3. If the source submits a timely application and additional information requested by the cabinet pursuant to Section 3(1)(a)3 of this administrative regulation, the source shall operate in compliance with an existing permit or order issued by the cabinet until the cabinet has issued a proposed permit. Thereafter, the source shall operate in compliance with the proposed permit until a final determination on the permit is made by the cabinet, after which the source shall operate in compliance with the final permit.

(d) An existing source that is required to have a state-origin permit may operate on the basis of an existing permit or order issued by the cabinet until the source fails to submit a timely application, or the source fails to submit any additional information requested by the cabinet pursuant to Section (3)(1)(a)3 of this administrative regulation, or the provisions of subsection 2(a) and (b) of this section have been met and a final determination is made on the permit.

(e) For a source which commences construction, reconstruction, or modification on or after the effective date of this administrative regulation, the following provisions shall apply:

1. A source that is subject to 401 KAR 51:017 or 401 KAR 51:052 shall not construct, reconstruct, modify, or operate except in compliance with a final permit.

2. A major source not subject to 401 KAR 51:017 or 401 KAR 51:052 shall not construct, reconstruct, modify, or operate except in compliance with a proposed permit until a final determination on a permit is made. Thereafter, the source shall operate in compliance with the final permit.

3. A minor source required to have a federally enforceable permit shall not construct, reconstruct, modify, or operate except in compliance with a draft permit. After a proposed permit is issued, the source shall operate in compliance with the proposed permit until a final determination on the permit is made, after which the source shall operate in compliance with the final permit.

4. For a source required to have a state-origin permit, the source shall not construct, reconstruct, modify, or operate except in compliance with a final permit. The cabinet shall issue a final permit after the provisions of subsection (2)(a) and (b) of this section have been met.

(2) Permit issuance provisions. As required in subsection (1) of this section, the following provisions, as applicable to the source, shall be met before a final determination on the permit is made:

(a) The cabinet has received a complete permit application, pursuant to Section 3(1)(b) of this administrative regulation, except that a complete application need not be received before issuance of a general permit pursuant to Section 4(4) of this administrative regulation.

(b) The conditions of the permit provide for compliance with all applicable requirements.

(c) The requirements for public participation, pursuant to Section 7 of this administrative regulation, have been met.

(d) The requirements for notifying and responding to affected states, pursuant to Section 8 of this administrative regulation, have been met.

(e) The requirements for review by the U.S. EPA pursuant to Section 9 of this administrative regulation have been met, and the U.S. EPA has not objected to the issuance of the permit within the time period specified in Section 9(3) of this administrative regulation.

(3) Compliance demonstration. A source that is constructing, reconstructing, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055.

1. A source which is operating to demonstrate compliance shall not be considered to have commenced operation.

2. If the source does not successfully demonstrate compliance, the permit shall be amended as necessary and the compliance schedule shall be revised or added, as appropriate, pursuant to Section 4(3)(f) of this administrative regulation.

(4) Final action on permit applications.

(a) Except as provided in the acid rain program for the permitting of affected sources, and in paragraphs (b) and (c) of this subsection, the cabinet shall make a final determination on the permit or permit revision eighteen (18) months after receiving a complete application.

(b) For the initial round of permit applications submitted pursuant to Section 3(1)(a) of this administrative regulation, the cabinet shall make a final determination on at least one-third (1/3) of the applications during each twelve (12) month period beginning twelve (12) months after the approval date of the state's permit program by the U.S. EPA, so that a final action shall be taken on all applications within thirty-six (36) months after program approval. Applications shall be processed in the order received.

(c) For sources which are constructing, reconstructing, or modifying and which are subject to 401 KAR 51:017, the cabinet shall make a final determination on the permit application within twelve (12) months from the date of receipt of a complete application.

(d) If an existing source submits a timely and complete application for a permit or permit revision, pursuant to Section 3 of this administrative regulation, the source's failure to have a permit or permit revision shall not be a violation of this administrative regulation until the cabinet makes a final determination on the permit application. The sources authority to operate shall cease to apply if, subsequent to the completeness determination made pursuant to Section 3(1)(b) of this administrative regulation, the applicant fails to submit by the deadline, specified in writing by the cabinet, additional information required to process the application.

(5) General requirements.

(a) A person shall not construct, reconstruct, modify, or operate a source in a manner different from the description contained in the permit application.

(b) For a source that is constructing, reconstructing, or modifying, a permit shall become invalid if construction is not commenced within eighteen (18) months after the permit is issued, if construction begins but is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the

scheduled completion date. The cabinet may extend these time periods upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. For a phased construction project, each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(6) Permit duration and renewal.

(a) Permit duration. A permit issued after the effective date of this administrative regulation shall remain in effect for a fixed term of five (5) years, except that:

1. Permits for solid waste incineration units that combust municipal waste shall remain in effect for a period of twelve (12) years and shall be reviewed by the cabinet at least every five (5) years; and

2. One-fifth (1/5) of the permits issued on the basis of the initial round of permit applications received pursuant to Section 3(1)(a) of this administrative regulation shall expire during each twelve (12) month period beginning November 15, 1997, so that all permits have expired by November 14, 2002. Expiration dates shall be assigned to permits in the order they are issued.

(b) Permit renewal.

1. Permit expiration shall terminate the source's right to operate unless a timely and complete renewal application has been submitted pursuant to Section 3(1)(a) of this administrative regulation.

2. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and for affected state and U.S. EPA review, that apply to initial permit issuance.

3. If a timely and complete application for a permit renewal is submitted consistent with Section 3 of this administrative regulation, but the cabinet fails to issue or deny the renewal permit before the end of the term of the previous permit, all the terms and conditions of that permit, including any permit shield that is issued pursuant to Section 4(6) of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.

4. If the cabinet fails to act promptly on a permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 6. Permit Revisions and Reopenings. (1) Administrative permit amendment procedures. An administrative permit amendment may be made by the cabinet pursuant to the following:

(a) The cabinet shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on the request, and may incorporate the changes without providing notice to the public or affected states if it determines the permit revision has been made pursuant to this paragraph.

(b) The cabinet shall submit a copy of the revised permit to the U.S. EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) The cabinet may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for the administrative permit amendment as defined in Section 1(3) of this administrative regulation, if the amendment meets the relevant requirements of Sections 4 through 9 of this administrative regulation for significant permit revisions.

(e) Administrative permit amendments for the acid rain portion of the permit shall be governed by the acid rain program.

(2) Permit revisions. Except as provided in the acid rain program, the procedures for revising a permit shall be as follows:

(a) Minor permit revision procedures.

1. Minor permit revision procedures shall be used for permit revisions that:

a. Do not violate an applicable requirement;

b. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

c. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

d. Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement but which the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. These terms and conditions include:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification in a provision of the SIP; and

(ii) An alternative emissions limit approved pursuant to 401 KAR 57:060;

e. Are not modifications in a provision of an administrative regulation promulgated in 401 KAR Chapters 50 through 63; and

f. Are not required to be processed as a significant permit revision.

2. Notwithstanding this paragraph and paragraph (b)1 of this subsection, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that these minor permit revision procedures are explicitly provided for in the SIP or in applicable requirements.

3. Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs;

b. The source's suggested draft permit;

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of minor permit revision procedures and a request that these procedures be used; and

d. Completed forms for the cabinet to use to notify affected states and the U.S. EPA, as required in Sections 8 and 9 of this administrative regulation.

4. U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete permit revision application, the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 8 and 9(2) of this administrative regulation, of the requested minor permit revision.

5. Timetable for issuance. The cabinet shall not issue a final minor permit revision until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:

a. Issue the minor permit revision as proposed;

b. Deny the minor permit revision application;

c. Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures; or

d. Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this administrative regulation.

6. The source's ability to make a change. The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change, and until the cabinet takes any of the actions specified in subparagraph 5a through c of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the

source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

(b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

1. Criteria. Group processing shall be used only for permit revisions that:

a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and

b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(20) of this administrative regulation, or five (5) tons per year, whichever is least.

2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.

b. The source's suggested draft permit revision.

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.

d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1b of this paragraph.

e. Certification, pursuant to Section 3(4) of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.

f. Completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.

3. U.S. EPA and affected state notification. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1b of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 8 and 9(2) of this administrative regulation.

4. Timetable for issuance. Subsection (2)(a)5 of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection (2)(a)5a through d of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45)-day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.

5.The source's ability to make a change. Subsection (2)(a)6 of this section shall apply to permit revisions eligible for group processing.

6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.

(c) Significant permit revision procedures.

1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or recordkeeping permit terms or conditions, shall normally be considered significant changes. The permittee may, however, make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.

2. Significant permit revisions shall meet all the requirements of this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.

(d) Operational flexibility. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph. A source may make changes within a permitted facility without a permit revision if:

1. The changes are not modifications pursuant to any provision of 42 USC 7401-7515 (Title I of the Act) or 42 USC 747651 through 7651o (Title IV of the Act);

2. The changes do not result in emissions which exceed the emissions allowable under the permit, whether expressed as a rate of emissions or in terms of total emissions;

3. For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The written notification shall include the following:

a. A brief description of the change within the permitted facility;

b. The date on which the change will occur;

c. Any change in emissions; and

d. Any permit term or condition that is no longer applicable as a result of the change.

(3) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under the following circumstances:

1. Additional applicable requirements become applicable to a source with a remaining permit term of three (3) or more years. A reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. A reopening shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to Section 5(6)(b)3 of this administrative regulation.

2. Additional applicable requirements, including excess emissions requirements, become applicable to an affected source in the acid rain program. Upon approval by the U.S. EPA and the cabinet, excess emissions offset plans shall be incorporated into the permit;

3. The cabinet or the U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

4. For federally enforceable permits, the cabinet or the U.S. EPA determines that the permit shall be revised or revoked to assure compliance with the applicable requirements or, for state-origin permits, the cabinet makes a similar determination.

(b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.

(c) Reopenings in paragraph (a) of this subsection shall not be initiated before a notice of intent to reopen is provided to the source by the cabinet at least thirty (30) days in advance of the date that the permit is to be reopened, except that the cabinet may provide a shorter time period in the case of an emergency.

(4) Reopenings for cause by the U.S. EPA.

(a) If the U.S. EPA finds that cause exists to terminate, modify, or revoke and reissue a federally enforceable permit pursuant to subsection (3) of this section, the U.S. EPA shall notify the cabinet and the permittee of this finding in writing.

(b) The cabinet shall, within ninety (90) days after receipt of notification, forward to the U.S. EPA a proposed determination of termination, revision, or revocation and reissuance of the permit, as appropriate. The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it finds that a new or revised permit application is necessary or that the cabinet has required the permittee to submit additional information.

(c) The U.S. EPA shall review the proposed determination from the cabinet within ninety (90) days of receipt.

(d) The cabinet shall have ninety (90) days from receipt of an objection by the U.S. EPA to resolve the objection and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

(e) If the cabinet fails to submit a proposed determination pursuant to paragraph (b) of this subsection or fails to resolve an objection pursuant to paragraph (d) of this subsection, the U.S. EPA shall terminate, modify, or revoke and reissue the permit after the permittee is notified of the reasons for the action, in writing. The permittee shall be given thirty (30) days from the date of the notice to comment on the U.S. EPA's proposed action and to request a hearing. This notice may be given during the procedures in paragraphs (a) through (d) of this subsection.

Section 7. Procedures for Public Participation. (1) The cabinet shall provide public notice of the opportunity to comment for the following permit actions:

(a) Issuance of a draft permit;

(b) Intended denial of a permit application;

(c) Issuance of a draft significant permit revision;

(d) Issuance of a draft general permit;

(e) Issuance of a permit renewal;

(f) Scheduling of a public hearing pursuant to subsection (7) of this section; and

(g) Any other permit-related activity that the cabinet determines to be of substantial interest to the public.

(2) The cabinet shall provide public notice by prominent advertisement in the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

(3) A copy of the notice required in subsection (2) of this section shall be sent to the following persons:

(a) The applicant;

(b) For sources subject to 401 KAR 51:017, officials and agencies having authority over the locations where the source will be located, as follows:

1. The administrator of the U.S. EPA through the appropriate regional office;

2. Local air pollution control agencies;

3. The chief executive of the city and county;

4. Any comprehensive regional land use planning agency; and

5. Any federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source;

(c) Affected states; and

(d) Persons on a mailing list which is maintained and compiled by the cabinet. This mailing list shall include persons requesting to be on the list, and persons solicited from participants in past permit proceedings in the affected area. The cabinet may notify the public of the opportunity to be on the list through periodic publication in the public press and in such publications as state-founded newsletters, environmental bulletins, or state law journals. The cabinet may delete from the list persons who fail to respond to an inquiry of continued interest in receiving notice.

(4) Public notice and the notice for those on the mailing list shall include the following minimum information:

(a) Name and address of the Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Division for Air Quality;

(b) Name and address of the permit applicant and, if different, the name and address of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity involved in the permit action;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, such as:

1. Copies of the draft permit;

2. The application and relevant supporting material, including permit applications, compliance plans, permits, and monitoring and compliance certification reports, except for confidential information; and

3. All other materials available to the cabinet that are relevant to the permit decision;

(e) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of hearings scheduled for the permit; and

(f) A description of the emission change involved in any permit revision, and for sources subject to 401 KAR 51:017, the degree of increment consumption that is expected from the source or modification, if applicable.

(5) The cabinet shall make available for public inspection, in at least one (1) location in each region in which the source is located or would be constructed, reconstructed, or modified, all nonproprietary information contained in the permit application, draft permit, and supporting materials. Public inspection of materials for temporary sources or general permits may be located at the discretion of the cabinet.

(6) Public comment.

(a) Except for permit revisions qualifying for administrative permit amendments and minor permit revision procedures, the cabinet shall provide a minimum of thirty (30) days for public comment on all permit proceedings, including initial permit issuance, draft permits, significant permit revisions, and permit renewals. The comment period shall begin on the date of publication of notice in the newspaper.

(b) The cabinet shall provide notice and opportunity for participation by affected states pursuant to Section 8 of this administrative regulation.

(c) A proposed permit shall not be issued until the public comment period has ended and the cabinet has prepared a response to the comments received. Public comments submitted in writing during the public comment period shall be considered by the cabinet in its decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. Comments may be submitted in alternate format to accommodate individuals with disabilities.

(7) Public hearings.

(a) The cabinet shall provide a public hearing if, on the basis of written requests received within the public comment period, the cabinet determines that material issues have been raised concerning the terms and conditions of a permit.

(b) The cabinet may also elect to hold a public hearing if the cabinet determines that the permit action is of significant public interest. In these cases, public notice of the hearing may be combined with the public notice of the draft permit.

(c) The cabinet shall give notice of a public hearing at least thirty (30) days in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing

shall contain the following information:

1. Reference to the dates of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of applicable rules and procedures for the hearing.

(d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts are also available, upon request, in large type or in braille.

(8) Public record. The cabinet shall keep a record of the commentors and of the issues raised during the public participation process. These records shall be made available to the public and to the U.S. EPA.

(9) Petition for EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 9(3)(f) of this administrative regulation.

(10) The following actions shall be exempt from this section:

(a) Permit revisions qualifying for minor permit revision procedures, including group processing;

(b) Administrative permit amendments; and

(c) Fast track permit revisions pursuant to the acid rain program.

Section 8. Notice to Affected States. (1) The cabinet shall give notice of draft permits to affected states on or before the time that the cabinet provides the draft permit or draft permit revision notice to the public pursuant to Section 7 of this administrative regulation, unless Section 6(2)(a) or (b) requires the timing of the notice to be different.

(2) Cabinet response. The cabinet, as part of the submittal of the proposed permit to the U.S. EPA (or for a minor permit revision, as soon as possible after the submittal), pursuant to Section 9 of this administrative regulation, shall notify the U.S. EPA and affected states in writing of refusal by the cabinet to accept a recommendation for the proposed permit that an affected state submitted during the public review period. The notice shall include the cabinet's reasons for not accepting the recommendation.

(3) The cabinet is not required to accept recommendations based on requirements that are not applicable to the proposed permit, or that are not based on requirements of this administrative regulation.

Section 9. U.S. EPA Review. (1) Prohibition on default issuance of permits.

(a) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal until the affected states and the U.S. EPA have had an opportunity to review the proposed permit action pursuant to this section and Section 8 of this administrative regulation; and

(b) The cabinet shall not issue a permit, permit revision, or permit renewal if it has failed to take action on the application pursuant to subsection (3) of this section, unless the U.S. EPA has waived the review for the U.S. EPA and affected states.

(2) Transmission of information to the U.S. EPA.

(a) The cabinet shall provide to the U.S. EPA a copy of each federally enforceable permit application, permit revision application, proposed permit, and final permit. Information that is submitted with a claim of confidentiality shall be submitted pursuant to Section 3(1)(c) of this administrative regulation.

(b) On a case-by-case basis, and with U.S. EPA approval, the cabinet may submit a permit application summary form and a relevant portion of the permit application and compliance plan in place of the complete application and compliance plan. If possible, this information shall be provided in computer-readable format compatible with the U.S. EPA's national database management system.

(3) U.S. EPA objection.

(a) The U.S. EPA will object to the issuance of any proposed permit determined by the U.S. EPA not to meet applicable requirements. The U.S. EPA shall file an objection in writing within forty-five (45) days of receipt of the proposed permit and the necessary supporting information.

(b) The cabinet shall not issue a permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.

(d) The U.S. EPA objection shall include a statement of the reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The U.S. EPA shall provide the permit applicant a copy of the objection.

(e) If the cabinet fails, within ninety (90) days after the date of a U.S. EPA objection, to revise and submit a proposed permit in response to the objection, the U.S. EPA shall issue or deny the permit pursuant to the requirements of 42 USC 7661 through 7661f, (Title V of the Act).

(f) If the U.S. EPA does not object, in writing, pursuant to this section, a person may petition the U.S. EPA within sixty (60) days after the expiration of the U.S. EPA's forty-five (45) day review period to make an objection. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period pursuant to Section 7 of this administrative regulation, unless the petitioner demonstrates that it was impracticable to raise the objections within the comment period, or unless the grounds for the objection arose after the comment period. If the U.S. EPA objects to the proposed permit as a result of a petition filed pursuant to this subsection, the cabinet shall not issue the permit until the U.S. EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to a U.S. EPA objection.

(g) If the cabinet has issued a permit prior to receipt of a U.S. EPA objection pursuant to this section, the U.S. EPA may modify, terminate, or revoke the permit pursuant to Sections 4 through 6 of this administrative regulation, and the cabinet shall thereafter issue a revised permit that satisfies the U.S. EPA objection.

(4) Recordkeeping and sharing of information. The cabinet shall keep records of the information required in subsection (2) of this section for at least five (5) years. The cabinet shall submit, upon request from the U.S. EPA and in a form specified by the U.S. EPA, including computer-readable files to the extent practicable, information which may reasonably be required to determine if the permitting program complies with the requirements of 42 USC 7401 through 7661q, or 40 CFR Part 70. If the information has been submitted to the cabinet under a claim of confidentiality, the cabinet may require the source to submit this information to the U.S. EPA directly. If the cabinet is authorized by a source to submit information to the U.S. EPA under a claim of confidentiality, the cabinet shall submit the confidentiality claim to the U.S. EPA together with the information to which it applies.

Section 10. Materials Incorporated by Reference. (1) The following documents relating to affected sources subject to the acid rain program, are hereby incorporated by reference:

(a) 40 CFR Part 72, Permits Regulation, as published in the Federal Register, January 11, 1993 (58 FR 3650-3687).

(b) 40 CFR Part 73, Allowance System, as published in the Federal Register, January 11, 1993 (58 FR 3687-3701).

(c) 40 CFR Part 75, Continuous Emission Monitoring, as

published in the Federal Register, January 11, 1993 (58 FR 3701-3757).

(d) 40 CFR Part 77, Excess Emissions, as published in the Federal Register, January 11, 1993 (58 FR 3757-3760).

(e) 40 CFR Part 78, Appeal Procedures for acid rain program, as published in the Federal Register, January 11, 1993 (58 FR 3760-3766).

(2) Copies of the documents incorporated by reference in subsection (1) of this section shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices of the Division for Air Quality:

(1) Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(2) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky, 41105-1507, (606) 325-8569;

(3) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(4) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(5) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(6) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304;

(7) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

~~Section 1. Prohibitions. (1) No person shall construct, reconstruct, alter, or modify a source unless a construction permit to do so has been issued by the cabinet.~~

~~(2) No person shall use, operate, or maintain an air contaminant source unless:~~

~~(a) A permit to so operate the air contaminant source has been issued by the cabinet and is currently in effect;~~

~~(b) The cabinet or the court has issued to the source a compliance order with a compliance schedule consistent with the Clean Air Act; or~~

~~(c) The source has demonstrated to the satisfaction of the cabinet that it is in compliance with the provisions of all applicable regulations including all provisions relating to public participation, a complete application for a permit to operate has been accepted by the cabinet and the cabinet has notified the applicant that the application is complete. Operation authorized by this paragraph shall expire thirty (30) days after the date of notification made to the source by the cabinet that an operating permit fee balance as specified by 401 KAR 50:036, Section 5(1) is due or immediately upon notification to the source by the cabinet that the source operating permit is denied.~~

~~(3) No person shall use, operate, or maintain a source which has changed ownership after a shutdown of six (6) months or more unless:~~

~~(a) The provisions of 401 KAR 50:055, Section 3(1) are met;~~

~~(b) The source was issued an operating permit and was in compliance with all applicable regulations under the previous ownership; and~~

~~(c) The provisions of Section 5(2) of this regulation are met.~~

~~Section 2. Applications. (1) Applications for permits required under Section 1 of this regulation shall be made on forms prepared by the cabinet for such purpose and shall contain such information as the cabinet shall deem necessary to determine whether the permit should be issued.~~

~~(2) Applications for permits shall be signed by the corporate president or by another duly authorized agent of the corporation; or by an equivalently responsible officer in the case of organizations other than corporations; or, in other cases, by the source owner or operator; or, in the case of political subdivisions, by the highest executive official of such subdivision. Such signature shall constitute personal affirmation that the statements made in the application are true and complete.~~

~~(3) The information submitted in the application shall, when specifically requested by the cabinet, include an analysis of the characteristics, properties and volume of the air contaminants based upon source or stack samples of the air contaminants taken under normal operating conditions. Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the permit application shall result in denial of the permit.~~

~~(4) An application for a permit may include one (1) or more affected facilities provided that all are contained within one (1) source. A person may apply for an amended permit to include new affected facilities provided that such new facilities are within the same source.~~

~~Section 3. Consideration of Applications. (1)(a) The cabinet shall deny an application for a permit if the cabinet determines that any provision of any applicable regulation is not met.~~

~~(b) The cabinet shall deny an application for a permit if the applicant willfully makes material misstatements in the application or amendments thereto.~~

~~(c) When required by the regulations of Title 401, Chapters 50 to 65, the cabinet shall base the determination of compliance with ambient air quality standards and prevention of significant air quality increments upon either:~~

~~1. Air quality models in accordance with 401 KAR 50:040; or~~

~~2. Ambient air quality monitoring in accordance with 401 KAR 53:010.~~

~~(d) In cases where no emission standards have been prescribed by regulation, the cabinet shall require the use of all available, practical and reasonable methods to prevent and control air pollution.~~

~~(2) Determinations and notifications.~~

~~(a) Operating permits.~~

~~1. Within thirty (30) days after receipt of an application to operate, the cabinet shall advise the owner or operator as to whether or not the application is complete, or if additional information is necessary in order to evaluate the application.~~

~~2. For sources which are subject to regulation in Title 401, Chapter 51, or modifications to any source which will cause an increase in the potential to emit of 100 tons per year in any one (1) year, the cabinet shall make its determination concerning the application including its approval, conditional approval, or denial of the operating permit application within sixty (60) days after receipt of a complete operating permit application. For all other sources, the time period for the cabinet's determination shall be within thirty (30) days of receipt of the complete application. The cabinet may extend each of the time periods specified in this paragraph if the cabinet determines that additional time is necessary. The cabinet shall notify the applicant, in writing, of its determination and shall set forth its reasons for any conditional approvals or denials.~~

~~(b) Construction permits. This paragraph shall apply to the proposed construction, modification, alteration or reconstruction of any source that is not subject to Section 4 of this regulation.~~

~~1. Within thirty (30) days after receipt of an application to construct, reconstruct, modify, or alter, or any addition to such application, the cabinet shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of subparagraph 2 of this paragraph shall be the date on which the cabinet makes a determination that the application is complete.~~

~~2. The cabinet shall make its determination concerning the application including its approval, conditional approval, or denial of the application within thirty (30) days after receipt of a complete application, unless the cabinet determines that an additional period of time is necessary to adequately review the application. The cabinet shall notify the applicant, in writing, of its determination and shall set forth its reasons for any conditional approvals or denials.~~

Section 4. Procedures for Public Participation. This section shall apply to the proposed major source construction, major modifications as defined in Title 401, Chapter 51, or modifications to any source which will cause an increase in the potential to emit of 100 tons per year or more of any one (1) pollutant.

(1) Within thirty (30) days after receipt of an application to construct, reconstruct, or modify or any addition to such application, the cabinet shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of subsections (2), (6) and (7) of this section shall be the date on which the cabinet makes a determination that the application is complete.

(2) Within thirty (30) days after the receipt of a complete application, the cabinet shall:

(a) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved.

(b) Make available in at least one (1) location in each region in which the proposed source would be constructed, reconstructed, or modified, a copy of all materials submitted by the owner or operator, a copy of the cabinet's preliminary determination and a copy or summary of other materials, if any, considered by the cabinet in making the preliminary determination; and

(c) For sources subject to 401 KAR 51:017, notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source would be situated, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification if applicable, and of the opportunity to comment in writing and of the opportunity to request a public hearing to receive written or oral comments. The cost of such advertisement shall be borne by the applicant.

(d) For all other sources subject to this section, notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source would be situated, of the application, the preliminary determination, and of the opportunity to comment in writing. The cost of such advertisement shall be borne by the applicant.

(3) A copy of the notice required pursuant to this section shall be sent to the following persons (any person otherwise entitled to receive notice under this subsection may waive his/her rights to receive notice):

(a) The applicant;

(b) Officials and agencies having cognizance over the locations where the source will be situated as follows: the Administrator of the U.S. EPA through the appropriate regional office; local air pollution control agencies; the chief executive of the city and county; any comprehensive regional land use planning agency; and any state, federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source; and

(c) Persons on a mailing list compiled by including those who request in writing to be on the list, soliciting persons for "area lists" from participants in past permit proceedings in that area, and notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as state founded newsletters, environmental bulletins, or state law journals. The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to such a request.

(4) All public notices issued under this regulation shall contain the following minimum information:

(a) Name and address of the cabinet and division processing the permit action for which notice is being given;

(b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application; and

(e) A brief description of the comment procedures required by subsections (5) and (8) of this section.

(f) In addition to the general public notice described in paragraphs (a) to (e) of this subsection, the public notice for a hearing under subsection (8) of this section shall be given at least thirty (30) days before the hearing and shall contain the following information: reference to the date of previous public notices relating to the permit; date, time, and place of the hearing; and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) Public comments submitted in writing within thirty (30) days after the date such information is made available shall be considered by the cabinet in its final decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. All comments shall be made available for public inspection at the same location in the region at which the cabinet made available preconstruction information relating to the proposed source.

(6) The cabinet shall take final action on an application subject to this section regarding its approval, conditional approval, or denial of the application. The cabinet shall notify the applicant, in writing, of its approval, conditional approval, or denial of the application and shall set forth its reasons for any conditional approvals or denials. Such notification shall be made available for public inspection at the location in the region at which the cabinet made available preconstruction information relating to the proposed source or modification. The public shall be notified of the cabinet's final action on an application subject to this section by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be situated. The cost of such advertisement shall be borne by the applicant.

(a) For sources subject to 401 KAR 51:017 and for which a public hearing has been requested and held, the cabinet shall take final action within 150 days after receipt of a complete application.

(b) For all other sources subject to this section, the cabinet shall take final action within ninety (90) days after receipt of a complete application.

(7) The cabinet may extend each of the time periods specified in subsections (2) and (5) of this section by no more than thirty (30) days or such other period as agreed to by the applicant and the cabinet deems necessary. The time period specified in subsection (6) of this section shall then be extended by such period as extended for subsections (2) and (5) of this section and may be extended for such other period as agreed to by the applicant and the cabinet deems necessary. In accordance with Federal Regulation 40 CFR 52.21(r), the cabinet shall in no case exceed one (1) year from the date of receipt of a complete application for taking final action on an application subject to 401 KAR 51:017.

(8)(a) For sources subject to 401 KAR 51:017, the cabinet shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit(s). The cabinet also may hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision. Public notice of the hearing shall be given as specified in paragraphs (b) and (c) of this subsection.

(b) Whenever a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the

time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subsection (5) of this section shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost.

Section 5. Terms and Conditions. (1) Permits issued hereunder shall be subject to such terms and conditions set forth and embodied in the permit as the cabinet shall deem necessary to ensure compliance with its standards. Such terms and conditions may include maintenance and availability of records relating to operations which may cause or contribute to air pollution including periodic source or stack sampling of the affected facilities.

(2) In the case of a transfer of ownership or name change of a source, the new owner or owner respectively shall abide by any permit to operate issued by the cabinet to the previous owner or to the same owner under the previous source name. The new owner or owner shall notify the cabinet of the change in ownership and/or source name within ten (10) days following the change in ownership or source name and shall apply for a duplicate permit to operate in the event of a change in the name of the source.

(3) When supported by justification which the cabinet deems adequate, the cabinet may, upon request by a source owner or operator, extend the termination date of an operating permit by a period not to exceed 180 days for the purpose of allowing sufficient time for a source to correct such deficiencies in the application as have been identified by the cabinet and to allow completion of the application review by the cabinet.

Section 6. Exemptions. The provisions of Section 1 of this regulation shall not apply to the affected facilities or sources listed in this section. These exemptions shall not relieve any source from the requirements of any standard set forth in an applicable regulation or a permit issued by the cabinet. Affected facilities or sources of pollutants located in areas designated as nonattainment for such pollutants which were required to obtain permits pursuant to subsections (11) and (14) of this section prior to the effective date of this regulation shall maintain the permit and any applicable requirements when the area is redesignated 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. The cabinet may require the owner or operator to demonstrate compliance with all applicable regulations.

(1) Except as provided elsewhere in this section, those affected facilities to which no regulation is applicable and which emit an air pollutant to which no ambient air quality standard applies.

(2) Incinerators with a charging rate of less than 500 pounds per hour except those subject to 401 KAR 51:017, 401 KAR 51:052, Title 401, Chapter 57, 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.

(3) Except as provided in 401 KAR 59:019, internal combustion engines whether fixed or mobile, and vehicles used for transport of passenger or freight.

(4) Direct fired sources used for heating and ventilating.

(5) Open burning as set forth in 401 KAR 63:005.

(6) Indirect heat exchangers at a source with a total heat input capacity of less than fifty (50) million BTU per hour which use natural gas, liquid petroleum gas, or distillate fuel oil as a main fuel or combinations of these as main and standby fuels and which are not subject to the requirements of 401 KAR 51:017 or 401 KAR 51:052.

(7) Any indirect heat exchanger with a heat input capacity of less than fifty (50) million BTU per hour which uses natural gas or liquid petroleum gas as a main fuel or combinations of these as main and standby fuels and which is not subject to the requirements of 401 KAR 51:017 or 401 KAR 51:052.

(8) Publicly owned roads.

(9) Feed grain mills having a hammermill with a rated capacity of ten (10) tons per hour or less, provided that the source does not include a grain dryer.

(10) Sawmills which produce only rough cut or dimensional lumber from logs and which have a rated capacity of 5,000 board feet per hour or less provided the source does not include an indirect heat exchanger or waste wood burner subject to regulation in Title 401, Chapter 59 or 61.

(11) Except as provided in this subsection, all sources whose uncontrolled emissions are less than twenty five (25) tons per year and whose potential to emit is less than or equal to five (5) tons per year of each of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides, and carbon monoxide. This exemption shall not apply to sources subject to regulation in Title 401, Chapter 57, 40 CFR 60, 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for such pollutants in 401 KAR 51:010; or to incinerators.

(12) Those sources which install air pollution control equipment where none was required. The owner or operator shall notify the cabinet in writing of such additions.

(13) Those sources which voluntarily modify or replace their air pollution control equipment to provide an equivalent or more efficient control of air pollutants. However, the owner or operator of such sources shall submit to the cabinet a complete registration form for the cabinet's concurrence at least forty five (45) days before installation of such control equipment.

(14) Those affected facilities which are a part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of each of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides, and carbon monoxide, provided that such increase does not subject the source to any other regulation. The owner or operator shall notify the cabinet in writing of such increases and construction projects thirty (30) days prior to commencing the construction project. This exemption shall not apply to affected facilities which are subject to regulation in Title 401, Chapter 57, 40 CFR 60, 401 KAR 63:020, or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for such pollutants in 401 KAR 51:010; or to incinerators.

(a) The owner or operator may not circumvent this regulation by separating what would normally be one (1) construction project into two (2) or more projects.

(b) If the owner or operator notifies the cabinet of or applies for a construction permit for another construction project before the first construction project becomes operational, then the two (2) construction projects shall be considered as one (1) construction project.

(c) If the owner or operator can demonstrate, through engineering analysis and internal documents, that two (2) or more construction projects were planned during separate time frames and involve separate independent facilities, the cabinet may allow the construction projects to be treated separately.

(15) Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to regulation.

Section 7. Source Obligation. (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who commences construction after June 6, 1979 without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action as provided under KRS 224.994.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of six (6) months

~~or more, or if construction is not completed within a reasonable time. The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.~~

~~(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the requirements of the cabinet and any other requirements under local, state, or federal law.~~

~~Section 8. Relocation of Minor Sources. The owner or operator of a minor source who is planning to relocate the source to a new site without any modification, may do so after applying for a duplicate operating permit, provided that the source has been issued and is operating under a current operating permit and is currently in compliance with all applicable regulations. The owner or operator shall submit an application for a duplicate operating permit on forms provided by the cabinet, including the duplicate operating permit fee, at least ten (10) days prior to the planned relocation. If the location at the new site would cause the source to be subject to any additional or different regulation than is currently applicable at the previous location, the source shall be considered to be a new source and shall be subject to Section 1 of this regulation.~~]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on September 21, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The Clean Air Act Amendments of 1990 (CAAA) mandate that the Commonwealth of Kentucky apply for authorization to implement an operating permit program which meets the requirements of Title V of the amendments. The proposed amendment establishes the requirements and procedures for the operating permits mandated by Title V of the CAAA. It also carries forward the cabinet's existing construction and operating permit requirements. Under the previous version of this regulation, sources had to apply for and obtain separate construction and operating permits. The proposed amendment melds the Title V requirements and the cabinet's existing permitting requirements so that sources will apply for and be issued one permit which allows them to construct and operate. No new emission control requirements are placed on existing sources because of the proposed amendment to this administrative regulation. Existing major sources will be required to submit a complete permit application, which addressed all applicable pollution control obligations under the State Implementation Plan (SIP), the air toxics program, and other applicable provisions of the Clean Air Act within one (1) year of the effective date of this administrative regulation. These sources will be required to use a new permit application form, which is incorporated by reference in 401 KAR 50:034. The cabinet must issue new permits to all existing major sources within three (3) years from the date the U.S. EPA approves the state program. There are about 300 such sources in Kentucky. The cabinet must issue one-third of the permits within the first year after U.S. EPA approval of the state's permit program and one-third of the remaining permits for each of the remaining two (2) years in this three (3) year period. The cabinet is proposing the submittal of applications from major sources within one (1) year after the effective date of this administrative regulation in order to meet this deadline. Existing minor sources are also required to apply for permits, but they will have fifty-four months from the effective date of this administrative regulation to do so. Minor sources will be required to use the new permit application form. Their permits must be issued within seventy-two months of the U.S. EPA's approval of the state program. It is estimated there are about 2000 such sources in Kentucky. Both new and existing sources which are subject to the Title V program will be subject to new procedures for review of their permits by the public, affected states, and the U.S. EPA prior to permit issuance. These sources will also be assessed emissions fees, pursuant to the proposed regulation, 401 KAR 50:038. Sources exempted from the proposed amended regulation are: sources whose emissions are below specified de minimis levels; asbestos renovation and demolition operations; sources subject only to the provisions of 40 CFR Part 61, subpart AAA for residential wood heaters; and twelve (12) other specific sources or activities listed in Section 2(2) of the proposed regulation, that are also exempted in the current permit regulation.

(a) Direct and indirect costs or savings to those affected: All direct and indirect costs required to operate the Title V portion of the cabinet's permitting program will be borne by the affected entities. The costs that are incurred by the cabinet to operate the Title V program will be recovered in an emissions fee charged to each source. Estimates of these costs are included in the Regulatory Impact Analysis for 401 KAR 50:038, Title V emissions fee. There will be a savings as a result of combining the tasks required to obtain a construction and an operating permit. Under the new process, there will be one application, one public hearing, one affected states review, and one U.S. EPA review for sources which construct, reconstruct, or modify after the effective date of this administrative regulation, provided the source demonstrates compliance when operation commences. If the source fails to demonstrate compliance, the permit will be revised to include a compliance plan. The revised permit will again be subjected to public, affected states, and the U.S. EPA review, but the source will be allowed to operated until a final determination is made on the permit.

1. First year: Since the Title V permitting process is new to everyone, administrative costs will be higher in the first year and during the initial permitting of sources.

2. Continuing costs or savings: Unlike the cabinet's existing permits, permits issued under the proposed amended administrative regulation will expire and must be renewed. All permits will expire every five years, except for municipal solid waste incinerators, which will be issued for (12) twelve years.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): There are no known additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There will be added paperwork due to an increase in the complexity of the required permit application form and the increased complexity of the permitting process. Sources must also submit periodic reports to the state and the U.S. EPA, as appropriate, concerning the extent of their compliance with permit obligations. The permit, permit application, and compliance reports will be available to the public, subject to confidentiality protection.

(2) Effects on the promulgating administrative body: In order to

meet all the Title V program requirements mandated by the CAAA, the cabinet will need substantial increases in its manpower and operating budget. These costs will be recovered through the emissions fee, as mandated by the CAAA, that will be charged to all sources subject to the Title V portion of the cabinet's permitting program. Specific dollar amounts may be found in the Regulatory Impact Analysis for 401 KAR 50:038, Title V Emissions Fee.

(a) Direct and indirect costs or savings:

1. First year: Added direct costs will result from additional public hearings, additional staff required to review permits and inspect facilities, the cost of implementing and maintaining a program for sources that require assistance, and the likelihood of added clerical or consulting costs due to the increased complexity of the permitting process. Also see the discussion in (1)(a) above.

2. Continuing costs or savings: For continuing costs, see discussion in (1)(a)2 above.

3. Additional factors increasing or decreasing costs: There are no known additional factors which will increase or decrease costs.

(b) Reporting and paperwork requirements: Reporting and paperwork will increase significantly due to the quantity and complexity of permit applications and the need to update and maintain accurate emissions inventories. These requirements will also increase significantly due to the cabinet's obligation, under Title V of the CAAA, to provide permit actions for public, affected states, and U.S. EPA review, prior to taking final action on a permit.

(3) Assessment of anticipated effect on state and local revenues: For assessment of anticipated effect on state and local revenues, please see the Regulatory Impact Analysis for 401 KAR 50:038.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Title V permitting program is mandated by the U.S. EPA pursuant to the Clean Air Act Amendments of 1990. No alternative methods were considered.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication:

1. The proposed amended administrative regulation contains a federally-mandated provision on the sharing of information, pursuant to 40 CFR 70.4(k). This requirement may be in conflict with KRS 224.10-210, the Kentucky statute on open records and confidentiality.

2. The proposed amended administrative regulation contains federally-mandated provisions for "emergencies." These provisions overlap the provisions for "malfunctions" in 401 KAR 50:055.

(a) Necessity of proposed regulation if in conflict: The state operating permit program must contain all federally-mandated provisions in order to obtain approval from the U.S. EPA to implement and enforce a Title V operating permit program in the Commonwealth of Kentucky.

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

1. A subcommittee of the Clean Air Act Implementation Task Force is studying the confidentiality issue and will recommended a solution.

2. The cabinet will propose an amendment to 401 KAR 50:055 in the near future to correct the overlap between "emergencies" and "malfunctions."

(6) Any additional information or comments: The cabinet has no additional information or comments.

TIERING: Was tiering applied? Yes. Sources whose emissions are below the specified cut-off levels for both criteria and toxic air pollutants or who are listed Section 2(2) are exempted from this administrative regulation. The applications of sources who seek to revise permits issued under the proposed amendment to this administrative regulation are subject to different degrees of public, affected states, and U.S. EPA review. Depending on the nature of the requested revision, a source may apply for an administrative permit amendment, a minor permit revision, or a significant permit revision.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. The proposed amended administrative regulation will affect any operation of a local government that meets the applicability requirements of Section 2 of the administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. Any operation of a local government that meets the applicability requirements will be subject to the proposed amended administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact on the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is contained in 42 USC 7401-7671q and 40 CFR Part 70 as published in the Federal Register of July 21, 1992 (57 FR 32250). 42 USC 7661-7661f (Title V of the CAAA) contains the specific requirements for a federally enforceable operating permit program. The final rules establishing the requirements for an approvable state operating permit program are contained in 40 CFR part 70.

2. State compliance standards. The state compliance standards are contained in KRS 13A and in the current version of this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate establishes no new emission control standards. It simply provides for an operating permit program whereby new and existing standards set by the U.S. EPA and states can be monitored and enforced.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 40 CFR Part 70 requires major sources to submit a complete application for a federally enforceable operating permit within twelve (12) months after the state operating permit program is approved by the U.S. EPA. The cabinet is proposing that major sources submit applications within twelve (12) months after the effective date of the amended administrative regulation in order to meet the schedule for issuance of final permits. (See the discussion in (1) above.) Even though 42 USC 7661-7661f (Title V of the CAAA) mandates that minor sources receive Title V operating permits, 57 FR 32250 defers the decision on permitting minor sources. The cabinet is proposing to permit minor sources in the same manner that major sources are permitted, except that minor sources have an additional forty-two (42) months to submit a complete permit application. This will allow the cabinet to issue permits to minor sources by the deadline mandated in the CAAA. The remaining requirements of the amendment which are in addition to the requirements of the federal mandate are carried forward from the existing version of this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The projected effective date of this amended administrative regulation is November 1993, while the U.S. EPA has until November 1994 to approve or disapprove the state's program submittal. While the federal regulation

allows the application submittal for major sources to be twelve (12) months after the state's program approval, the U.S. EPA is encouraging states to establish an earlier date. Early submittal of the permit applications from major existing sources will allow the cabinet to issue the initial round of permits by the November 1997 deadline specified in the federal mandate. The cabinet has included provisions for the permitting of minor sources because minor sources are currently permitted under the state's existing permit rules. Since the existing permitting procedures are being incorporated into the amendment to this administrative regulation, it was necessary to include provisions for minor sources. The remaining requirements that are in addition to the federal mandate are already part of the state's permitting program. The federal mandate addresses only the operating phase of a source's permit. In order to simplify the permitting process for the regulated community, the public, and the cabinet, the proposed amendment combines the state's existing requirements for separate construction and operating permits with the requirements for a federally enforceable operating permit. The proposed amendment will allow the cabinet to issue a single permit for a source to construct and operate.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative 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 administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised August 12 [~~July 15~~], 1993, are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-15	Cooperation and Coordination with Oldham County Court
KSR 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
KSR 02-00-01	Inmate Canteen
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts [~~(Amended 7/15/93)~~]
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks [~~(Amended 7/15/93)~~]
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities
KSR 05-00-03	Management Information Systems
KSR 06-00-01	Inmate Master File
KSR 06-00-02	Records Audit
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 07-00-07	Discharge Monitoring Report (DMR)
KSR 07-00-08	Control of Hazardous Energy (Lockout or Tagout)
KSR 07-00-09	Inventory Control of Underground Storage Tanks
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure Limited Issue
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-21	Crime Scene Camera
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23	Drug Abuse Testing
KSR 09-00-25	Inmate Motor Vehicle Operator's License
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas
KSR 09-00-29	Transportation of Inmates
KSR 09-00-30	Parole Board
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area
KSR 10-00-10	Unit D - and Unit E - Special Management Inmate Legal Access
KSR 10-00-11	Unit D - Behavior Problem Control
KSR 10-00-13	Unit D - Property Room Access
KSR 10-01-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-01-02	Unit D - General Operational Procedures
KSR 10-01-03	Unit D - Inmate Tracking System and Records System
KSR 10-01-04	Unit D - Administrative Segregation
KSR 10-01-05	Unit D - Disciplinary Segregation
KSR 10-01-06	Unit D - Protective Custody
KSR 10-01-07	Unit D - Geriatrics
KSR 10-01-08	Unit D - Safekeepers and Pretrial Contract Hold Status Inmates (Amended 8/12/93)
KSR 10-01-09	Unit D - Hold Ticket Residents
KSR 10-02-01	Mental Health Staffing Pattern
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care
KRS 10-02-04	Unit E-General Operating Procedures
KSR 11-00-01	Meal Planning for the General Population
KSR 11-00-02	Special Diets
KSR 11-00-03	Food Service Inspections
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates
KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-03	State Items Issued to Inmates
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 12-00-09	Treatment of Inmates with Body Lice
KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds

KSR 13-00-04	Medical and Dental Care
KSR 13-00-05	Medical Records
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Health Evaluation
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 13-00-17	Special Care
KSR 13-02-01	Mental Health Services
KSR 13-02-02	Mentally Retarded Inmates
KSR 13-02-03	Suicide Prevention and Intervention Program
KSR 13-02-04	Division of Mental Health's Residential Services
KSR 14-00-01	Inmate Rights
KSR 14-00-04	Inmate Grievance Procedure
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures (Amended 8/12/93)
KSR 15-00-08	Firehouse Living Area
KSR 15-00-09	Smoking and No Smoking Areas for Inmates and Staff
KSR 15-00-10	Program Services for Special Housing Placement
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations
KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations
KSR 16-01-02	Lawn Visit Procedure and Regulations (Amended 8/12/93)
KSR 16-01-03	Night Visit Regulations (Amended 8/12/93)
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs
KSR 20-00-04	Criteria for Participation in A College Program
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: August 12, 1993

FILED WITH LRC: August 12, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for Setember 22, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 528 employees of the Kentucky State Reformatory, 1404 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(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 commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department 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 administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised August 12 [~~May 14~~], 1993 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, Department of Corrections, 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 01-12-01	Duty Officer Responsibilities
LLCC 02-01-02	Fiscal Management: Accounting Procedures (Amended 8/12/93)
LLCC 02-01-03	Fiscal Management: Agency Funds (Amended 8/12/93)
LLCC 02-01-04	Fiscal Management: Insurance (Amended 8/12/93)
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 11-09-01	Rules and Regulations of the Unit (Amended 8/12/93)
LLCC 11-13-01	Inmate Dress and Use of Access Areas (Amended 8/12/93)
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 (Amended 8/12/93)
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 (Amended 8/12/93)
LLCC 14-05-01	Institutional Inspections (Amended 8/12/93)
LLCC 15-01-01	Health Maintenance Services; Sick Call and Pill Call [~~(Amended 5/14/93)~~]
LLCC 15-03-01	Pharmacy [~~(Amended 5/14/93)~~]
LLCC 15-03-02	Pharmacy Personnel [~~(Added 5/14/93)~~]
LLCC 15-03-03	Distribution, Procurement and Control [~~(Added 5/14/93)~~]
LLCC 15-03-04	Inmate - Self Administration of Medication [~~(Added 5/14/93)~~]
LLCC 15-03-05	Use of Psychotropic Medications [~~(Added 5/14/93) (Renumbered from 15-03-02)~~]
LLCC 15-05-02	Licensure and Training Standards [~~(Amended 5/14/93)~~]
LLCC 15-06-02	Specialized Health Services [~~(Amended 5/14/93)~~]
LLCC 15-06-03	Emergency Medical/Dental Care Services [~~(Amended 5/14/93)~~]
LLCC 15-06-04	First Aid/CPR Training Program [~~(Amended 5/14/93)~~]
LLCC 15-06-05	Suicide Prevention and Intervention Program
LLCC 15-07-01	Health Records [~~(Amended 5/14/93)~~]
LLCC 15-08-01	Special Diets [~~(Amended 5/14/93)~~]
LLCC 15-14-01	Informed Consent
LLCC 15-15-01	Medical Restraints [~~(Amended 5/14/93)~~]
LLCC 15-16-01	Health Education/Special Health Programs [~~(Amended 5/14/93)~~]
LLCC 15-17-01	Serious and Infectious Diseases [~~(Amended 5/14/93)~~]
LLCC 16-01-01	Inmate Rights and Responsibilities
LLCC 16-03-01	Inmate Legal Services
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 18-03-04	Parole Hearings [~~(Added 5/14/93)~~]
LLCC 20-01-01	Personal Property Control
LLCC 20-04-01	Inmate Canteen Committee [~~(Added 5/14/93)~~]
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 26-01-02	Prayer [~~(Added 5/14/93)~~]
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: August 12, 1993
FILED WITH LRC: August 12, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 22, 1993 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 294 employees of the Luther Luckett Correctional Complex, 1052 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(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 commissioner to adopt, amend or rescind administrative 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 administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised August 12 [~~July 15~~], 1993, 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, Department of Corrections, 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
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 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 [~~(Amended 7/15/93)~~]
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 Unit
NTC 10-02-01 Protective Custody Unit
NTC 10-03-01 Protective Custody
NTC 11-03-01 Food Services: General Guidelines
NTC 11-04-01 Food Service: Meals
NTC 11-04-02 Menu, Nutrition and Special Diets
NTC 11-05-02 Health Standards and Regulations for Food Service Employees
NTC 11-06-01 Inspection and Sanitation
NTC 11-07-01 Purchasing and Storage of Food Products
NTC 12-01-01 Institutional Inspection
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02 Issuance of Personal Hygiene Products
NTC 13-01-01 Emergency Medical Care Plan
NTC 13-01-02 Emergency and Specialized Health Services
NTC 13-02-01 Administration and Authority for Health Services
NTC 13-03-01 Sick Call and Pill Call
NTC 13-04-01 Utilization of Pharmaceutical Products (Amended 8/12/93)
NTC 13-05-01 Dental Services (Amended 8/12/93)
[~~NTC 13-05-02 Health Maintenance Dental Services (Deleted 8/12/93)~~]
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 (Amended 8/12/93)
NTC 13-20-02 Infection Control (Amended 8/12/93)
NTC 13-20-03 Disposal of Biohazard Waste
NTC 13-21-01 Vision Care and 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, Viewing, Handling and Storage 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 15-01-01 Restoration of Forfeited Good Time
NTC 15-02-01 Due Process/Disciplinary Procedures (Amended

8/12/93)
NTC 15-02-02 Extra Duty Assignments
NTC 15-02-03 Hearing Officer
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail (Amended 8/12/93)
NTC 15-03-02 Rules and Regulations for General Population 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 (Amended 8/12/93)
NTC 16-02-03 Honor Dorm Visiting [(~~Amended 7/15/93~~)]
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 Educational Programs
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 (Amended 8/12/93)
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
NTC 26-01-01 Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 12, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 22, 1993, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and William Seabold, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 268 employees of the Northpoint Training Center, 928 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised August 12 [~~June 15~~], 1993, are incorporated by reference and shall be referred to as Western Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

WKCC 02-01-01 Inmate Funds
WKCC 02-01-02 Inmate Canteen
WKCC 02-00-03 Invoice and Voucher Processing
WKCC 02-00-04 Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06 Purchasing Procedures
WKCC 02-01-01 Inmate Funds
WKCC 02-02-01 Agency Funds and Accounting Procedures
WKCC 02-08-01 Property Receipt and Inventory Procedures
WKCC 04-01-01 Travel Reimbursement for Official Business in Attendance at Professional Meetings

WKCC 04-02-01	Employee Training and Development
WKCC 04-04-01	Educational Assistance Program
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse and Alcohol Testing
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04	Food Service Security
WKCC 11-00-05	Food Service General Guidelines
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing
WKCC 13-00-01	Special Health Programs (Amended 8/12/93)
WKCC 13-01-01	Use of Pharmaceutical Products
WKCC 13-02-01	Health Care Services
WKCC 14-04-01	Legal Services Program
WKCC 14-06-01	Inmate Grievance Procedure
WKCC 15-01-01	Hair and Grooming Standards
WKCC 15-03-01	Meritorious Good Time
WKCC 15-05-01	Restoration of Forfeited Good Time
WKCC 16-01-01	Visiting Policy and Procedures
WKCC 16-02-01	Inmate Correspondence
WKCC 16-03-01	Inmate Access to Telephones
WKCC 16-04-01	Inmate Packages
WKCC 17-01-01	Inmate Personal Property
WKCC 17-02-01	Inmate Reception and Orientation
WKCC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKCC 20-01-01	Education Program
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities
WKCC 22-00-02	Inmate Clubs and Organizations
WKCC 23-00-01	Religious Services
WKCC 25-02-01	Inmate Release Process
WKCC 25-03-01	Prerelease Programs [(~~Amended 6/15/93~~)]

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: August 12, 1993

FILED WITH LRC: August 12, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 22, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and William Seabold, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 143 employees of the Western Kentucky Correctional Complex, 410 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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

601 KAR 9:010. Motor carrier vehicle registration if paying seat taxes.

RELATES TO: KRS 186.276, 186.281, 281.720

STATUTORY AUTHORITY: KRS 281.600

NECESSITY AND FUNCTION: This administrative regulation establishes guidelines for purchase or transfer of a motor vehicle license plate for [~~certain~~] motor carriers governed by both KRS 281.720 and either KRS 186.276 or 186.281. U-drive-it vehicles are governed by 601 KAR 1:145.

Section 1. Evidence of Ownership of Motor Carrier Vehicles Paying Seat Taxes [~~Buses~~]. (1) Any person desiring to obtain any license plate for a bus, taxicab, limousine, airport shuttle vehicle, city bus, industrial bus, or suburban bus operated pursuant to a certificate of public convenience and necessity issued by the Department of Vehicle Regulation shall [~~must~~] submit to the department a certificate of title or other satisfactory evidence of ownership of the motor vehicle [~~bus~~] to be licensed.

(2) The vehicle [~~No such bus~~] shall not be licensed unless the certificate of title or other satisfactory evidence of ownership indicates that the person applying for the license plate is the owner [~~of the bus~~] or lessee of the vehicle [~~thereof~~].

Section 2. Disposition of License Plate upon Sale or Transfer of Vehicle. When any motor vehicle licensed by the department as required by either KRS 186.276 or 186.281 is sold or transferred to a person who is the present holder of a valid certificate or permit, and who intends to operate the motor vehicle as a for-hire passenger carrier and consistent with his certificate or permit, a license plate may, upon approval by the department, be transferred to the purchaser or lessee. The transferee of the [~~such a~~] vehicle and license plate shall not commence operation of the motor vehicle bearing the license plate before notifying the department of the transfer and obtaining approval of the department.

Section 3. Transfer of License Plate. A [~~No~~] person shall not transfer a license plate issued by the department pursuant to KRS

186.276 or 186.281 and 281.720 from one (1) motor vehicle to another without prior approval of the department.

NORRIS BECKLEY, Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: July 21, 1993
FILED WITH LRC: August 3, 1993 at 11 a.m.
PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on September 21, 1993 at 9 a.m. local prevailing time in the Transportation Cabinet, Room 1003 on the 10th Floor, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by September 16, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 16, 1993. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until 4:30 p.m., September 21, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502)564-4890.

REGULATORY IMPACT ANALYSIS

Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All of the licensed/certificated operators of buses, taxicabs, limousines, and airport shuttles in Kentucky.
(a) Direct and indirect costs or savings to those affected: None, as a result of the changes to this administrative regulation.
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 as a result of the changes to this administrative regulation.
(2) Effects on the promulgating administrative body: None as a result of the changes to this administrative regulation.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: In the quadrennial review of the Transportation Cabinet's administrative regulations, the Interim Joint Transportation Committee found problems with this administrative regulation as it relates to KRS Chapter 13A as well as in its omission of certain types of commercial vehicles. Therefore, the changes were necessary.
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None
(a) Necessity of proposed regulation if in conflict:
(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. Licensing and titling of commercial motor vehicles must be approximately the same as those for noncommercial vehicles. This administrative regulation is applicable only to those commercial vehicles for which the process is not clearly established by the state law or administrative regulation.

EDUCATION, ARTS AND HUMANITIES CABINET
Education Professional Standards Board
(Proposed Amendment)

704 KAR 20:005. Kentucky standards for preparation-certification of professional school personnel program approval.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.042
STATUTORY AUTHORITY: KRS 161.028[~~, 161.030, 161.042~~]
NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.028 gives the Education Professional Standards Board the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for approving and evaluating college, university and school district programs for the preparation of teachers and other professional school personnel; and KRS 161.030 rests the certification of teachers and other school personnel, the approval of college and university preparation programs for teachers and other school personnel and their curricula with the Education Professional Standards Board. KRS 161.042 gives the Education Professional Standards Board the authority to establish requirements for supervisory personnel for student teachers.

Section 1. The Education Professional Standards Board incorporates by reference the "Kentucky Standards for the Preparation-Certification of Professional School Personnel, (August 1993 [~~October 1992~~])", which shall include the standards and procedures for the approval of college and university curricula for the preparation programs. This document may be inspected, copied or obtained from the Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4606, Monday through Friday, 8 a.m. to 4:30 p.m.

DANIEL GREEN, Chairman
APPROVED BY AGENCY: August 3, 1993
FILED WITH LRC: August 10, 1993 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on September 21, 1993, at 10 a.m. in the Conference Room, 21st Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 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.
Contact Person: Dr. Roland Goddu, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, 502 564-4606.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dr. Dianne Worthy
(1) Type and number of entities affected: All institutions of higher learning.

(a) Direct and indirect costs or savings to those affected:

1. First year: $2,000 savings due to decrease in administrative costs.

2. Continuing costs or savings: $2,000 savings per year.

3. Additional factors increasing or decreasing costs (note any effect upon competition: None

(b) Reporting and paperwork requirements: Reduction

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(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: The proposed changes will enhance efficiency.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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 applies uniformly to all institutions of higher learning.

EDUCATION, ARTS AND HUMANITIES CABINET
Education Professional Standards Board
(Proposed Amendment)

704 KAR 20:470. Principal intern program.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028 [~~156.070, 161.027~~]

NECESSITY AND FUNCTION: KRS 161.027 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires that effective July 1, 1988, all applicants for certification as school principal with less than two (2) years of appropriate service complete a one (1) year intern program. This administrative regulation establishes the procedures to implement the principal intern program required under KRS 161.027.

Section 1. (1) [~~Effective July 1, 1988,~~] All applicants for certification as a school principal, including vocational principal, shall successfully complete a one (1) year intern program.

(2) Exception to this requirement shall be granted to applicants who have successfully served as a school principal, while holding the appropriate certification required for that position, for two (2) of the ten (10) years immediately preceding application for certification. Successful experience shall be established by recommendation from the school official responsible for evaluating the applicant during the experience as a school principal. [~~Such recommendation shall be submitted on the letterhead of the previously employing or currently employing school district and shall be signed by the school official responsible for evaluating the person when employed as a school principal. Recommendations shall be directed to the Kentucky Department of Education, Division of Teacher Education and Certification, and shall include the applicant's name, social security number, dates of employment as a principal, name of school in which employed, and statement of successful performance while employed as a principal.~~]

Section 2. (1) Only applicants who have successfully completed all prerequisites to certification specified by statute and administrative regulation, including the testing requirements mandated by KRS 161.027, and who have been issued a statement of eligibility [~~for Internship~~] by the Kentucky Department of Education shall be eligible to participate in the principal intern program specified by this administrative regulation.

(2) The principal internship specified by KRS 161.027 shall take place when a person holding a valid statement of eligibility [~~for Internship~~] is employed as a principal [~~or assistant principal~~] in a school that meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting agency. The principal internship may be completed by a full-time assistant principal provided the assignment includes the full range of responsibilities of a school principal including instructional leadership, curriculum development, school management, interpersonal relationships, and professional responsibilities. [~~is accredited by the Kentucky State Board of Education~~].

Section 3. (1) The primary purpose of the principal intern program shall be to provide beginning principals with the opportunity for learning under the supervision of experienced educators.

(2) A secondary purpose shall be to provide continuing certification only upon the demonstration of achievement by the principal intern.

(3) These purposes shall be accomplished through the principal intern committee which shall be assigned to supervise, assist, and assess the principal intern. As a significant part of this process, the committee shall utilize performance evaluation in the areas of instructional leadership, school management, interpersonal relationships, and professional responsibilities. These areas reflect the research and literature on effective schools and effective principals. Evaluation areas and performance descriptors shall be included in the Handbook for the Kentucky Principal Internship Program, dated July 1993, [~~and Handbook for Principal Intern Committee~~] which is [~~are~~] incorporated herein by reference and may be obtained from the Office [~~. The Handbook for the Principal Intern and Handbook for the Principal Intern Committee shall be distributed by the Kentucky Department of Education, Division~~] of Teacher Education and Certification, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 4. (1) Members of the principal intern committee shall include a principal mentor, employing school district superintendent or designee, and an administrator educator.

(2) The principal mentor shall be selected by the superintendent of the school district employing the principal intern. Preference in selection shall be given to the following criteria in the order stated:

(a) A currently-employed principal of a similar school level within the employing district;

(b) A currently-employed principal of a similar school level in a nearby school district;

(c) A currently-employed principal of a different school level within the employing school district;

(d) A currently-employed principal of a different school level in a nearby school district;

(e) A recently-retired successful principal of a similar school level; and

(f) A recently-retired successful principal of a different school level.

(3) Selection of a principal mentor from another school district shall be subject to the approval of the superintendent of the proposed principal mentor. An assistant principal shall not serve in this capacity. Should no principal mentor be available through these options, a qualified person shall be identified by the Kentucky Department of Education.

(4) The superintendent of the employing local school district shall serve or shall appoint a designee who has had experience as a principal or assistant principal.

(5) An administrator educator, who is a faculty member in a

state-approved administrator training program at an institution of higher education, shall be appointed by the Kentucky Department of Education in consultation with the employing institution of higher education. The administrator educator shall have had experience as a principal or assistant principal. If an administrator educator is not available, the Kentucky Department of Education shall identify a qualified person.

Section 5 (1) Each member of the principal intern committee shall successfully complete an [~~a specified number of hours of~~] approved training program provided by the Kentucky Department of Education in the supervision, assistance, and assessment of principal interns.

(2) The [~~Such~~] training shall provide for a high degree of consistency of implementation throughout the state.

(3) The cost of travel expenses incurred during the [~~such~~] training shall be reimbursed by the Kentucky Department of Education in accordance with state travel administrative regulations.

(4) Training sessions shall be scheduled during the summer months when possible.

(5) Training for administrator educators shall be scheduled through the institutions of higher education.

Section 6. (1) The period of internship shall include the term of employment covered by the contract with the school district.

(2) In unusual circumstances when a principal intern is employed after the school year has commenced, the period of internship shall not be less than 140 contract days. In some instances, the period of internship may span two (2) school years.

Section 7. (1) The school district employing a principal intern shall complete and forward the [~~Part B of the "Statement of Eligibility and~~] confirmation of employment [~~for the Principal Internship" form and furnish such~~] to the Kentucky Department of Education, Office [~~Division~~] of Teacher Education and Certification. Except in unforeseen circumstances, this form shall be received by the Kentucky Department of Education not later than July 1 of the employment year.

(2) When a principal is employed after July 1, the form shall be submitted not later than twenty (20) calendar days following employment.

(3) Upon receipt of the [~~"Statement of Eligibility and~~] confirmation of employment [~~for the Principal Internship" form~~], the Kentucky Department of Education shall appoint the administrator educator member to the principal intern committee.

Section 8. (1) The Kentucky Department of Education shall prepare handbooks describing the principal intern program which shall be distributed to principal interns and to members of principal intern committees.

(2) The superintendent of the employing school district shall provide an orientation meeting for each principal intern to clearly inform the intern of the requirements of the program. [~~The orientation meeting should ordinarily be held prior to activities necessary to begin a new school year.~~] At that time, or as soon as possible thereafter, the principal intern shall be provided the names of members of the principal intern committee.

Section 9. (1) The employing school district shall provide to the Kentucky Department of Education information related to the principal mentor and superintendent or designee who will serve as members of each principal intern committee as soon as these members are identified. The [~~Such~~] information shall include name, social security number, address, and telephone number.

(2) If a principal mentor is not available through the options specified in Section 5(1) of this administrative regulation, the employing school district shall request that the Kentucky Department of Education, Office [~~Division~~] of Teacher Education and Certification, assist in the identification of a principal mentor.

Section 10. (1) The superintendent of the local school district employing the principal intern shall schedule a meeting of all members of the principal intern committee to be held not later than fifteen (15) days following appointment of all committee members. At that time, the committee shall meet with the principal intern to clarify roles, procedures and expectations. The committee shall also select a chairperson who shall be responsible for scheduling all future visits and conferences and for the completion of required reports.

(2) The principal mentor shall spend a minimum of fifty (50) hours outside of scheduled school hours with the principal intern. The number of hours spent with the intern shall be reported to the principal intern committee at each committee meeting, and a final report of the total number of hours shall be made in writing by the committee to the superintendent of the local school district employing the principal intern. A copy of the committee's report confirming the number of hours spent by the principal mentor shall be submitted to the Kentucky Department of Education by the local school district in applying for reimbursement of funds as specified in Section 12(1) of this administrative regulation.

(3) All committee members shall make a minimum of three (3) performance observations of the principal intern. Following each performance observation, all committee members shall meet to discuss observed performance. A conference shall then be held with the principal intern by committee members to provide information on the skill level demonstrated and suggestions for professional growth.

(4) Except in unforeseen circumstances, the committee shall follow these guidelines for scheduling a sequence of observations, meetings, and conferences. The first sequence shall be completed during the period from July 1 through November 1. The second sequence shall be completed during the period from November 2 through March 1. The third sequence shall be completed during the period from March 1 through May 31.

(5) The final meeting of the principal intern committee shall include a decision regarding the successful completion of the internship.

Section 11. (1) In arriving at a professional judgment of the successful completion of internship, the committee shall consider the progress of the principal intern throughout the entire school year, with particular emphasis on the progress demonstrated during the final months of the internship.

(2) At the completion of the internship experience as defined in Section 5 of this administrative regulation, the chairperson shall report to the Kentucky Department of Education and to the superintendent of the employing local school district, if the superintendent is not a member of the committee, the committee's decision regarding the principal intern's successful completion of the intern program.

(3) If a principal intern committee believes that an intern not successfully completing an internship could benefit from a second year of internship if the intern were [~~was~~] employed as a principal or assistant principal by the same or another school district, the committee may attach to its decision a summary of the mitigating or extenuating circumstances.

(4) If a principal intern does not successfully complete the internship, the principal intern may repeat the intern program one (1) time if employed as a principal or assistant principal by the same or another local school district.

(5) If [~~such~~] employment is not obtained within the four (4) year period of eligibility for internship, the person shall [~~must~~] reestablish eligibility for internship by successfully completing the examination prerequisites in effect at that time.

Section 12. (1) The Kentucky Department of Education shall reimburse the school district employing the principal intern for the

payment to each principal mentor of mileage expenses in accordance with state travel administrative regulations and for an amount not to exceed $1,000 to each principal mentor as compensation for out-of-school time spent with the principal intern. A form to be used in submitting these expenses shall be included in the Handbook for Kentucky Principal Internship Program [~~to be developed and disseminated by the Kentucky Department of Education~~]. A copy of the committee's report of the number of hours spent by the principal mentor with the principal intern shall be attached to this form.

(2) The Kentucky Department of Education shall contract with institutions of higher education to pay an amount of $200 for each administrator educator and for mileage expenses in accordance with state travel regulations. Each institution shall make its own determination as to the allocation of funds received from this program.

(3) If the administrator educator member of the committee does not represent an institution of higher education, the Kentucky Department of Education shall reimburse the appropriate agency or individual for mileage expenses in accordance with state travel administrative regulations and for an amount not to exceed $200.

(4) All costs for the superintendent or designee, except travel reimbursement to attend required training, shall be the responsibility of the local school district.

(5) Payments to members of principal intern committees for vocational principal interns shall be administered by the Kentucky Department of Education with reimbursement to the Cabinet for Workforce Development [~~, Office of Vocational Education~~].

Section 13. Complaints relative to the failure of the principal intern committee to comply with statutory and regulatory provisions of the principal intern program shall be directed to and evaluated by, the Kentucky Department of Education. Whenever practical, a decision on the [~~such~~] complaints shall be made within sixty (60) days following receipt of the complaint.

Section 14. The Kentucky Department of Education shall collect and analyze data, on an annual or biennial basis, which permit evaluation of the principal intern program covered by this administrative regulation.

DANIEL GREENE, Chair

APPROVED BY AGENCY: August 3, 1993

FILED WITH LRC: August 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 10 a.m. in the Conference Room, 21st Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Roland Goddu, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4606.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dianne Worthy

(1) Type and number of entities affected: KRS 161.027 requires that effective July 1, 1988, all applicants for certification as school principal with less than two years of appropriate service complete a one year intern program.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs to individuals for acquiring appropriate credentials and passing the required tests. Costs to institutions of higher education in establishing and providing approved programs of preparation.

2. Continuing costs or savings: Costs to individuals for acquiring appropriate credentials and passing the required tests. Costs to institutions of higher education in establishing and providing approved programs of preparation.

3. Additional factors increasing or decreasing costs (note any effect upon competition: None

(b) Reporting and paperwork requirements: Candidates must file appropriate applications. Statement of eligibility is issued to candidate.

(2) Effects on the promulgating administrative body: Division of Testing and Internship coordinate the Kentucky Principal Specialty Test and establishes internship committee for all new principal/assistant principal applicants.

(a) Direct and indirect costs or savings:

1. First year: Issuing statement of eligibility/certificates and related bookkeeping.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Division of Testing and Internship must maintain testing and internship records.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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. Certification requirements are uniformly applicable to all individuals.

EDUCATION, ARTS AND HUMANITIES CABINET
Education Professional Standards Board
(Proposed Amendment)

704 KAR 20:585. Procedures for certificate revocation.

RELATES TO: KRS 161.028, 161.120

STATUTORY AUTHORITY: KRS 161.028

NECESSITY AND FUNCTION: KRS 161.028 and 161.120 provides that the Education Professional Standards Board may suspend or revoke teaching certificates. This administrative regulation identifies the conditions for initiating revocation proceedings and the procedures to be followed during the revocation proceedings, including the rules governing the conduct of the adjudicatory hearing.

Section 1. (1) [~~In addition to those grounds provided in KRS 161.120,~~] An action to revoke or suspend any Kentucky certificate may be initiated by the Education Professional Standards Board ("board") upon receipt of one (1) or more of the following:

(a) Report of criminal prosecution for persons who are not employed in a public or private school position but who hold a Kentucky teaching certificate.

(b) Report of certificate revocation or suspension from another state.

(c) Report received from a local district superintendent resulting from an unsatisfactory criminal records check as required by KRS 160.380.

(d) Report from the chief state school officer or a local board of education of the conduct of the superintendent which might reasonably be construed as grounds for revocation as set forth in KRS 161.120(1).

(2) Failure to report by the district superintendent as required by KRS 161.120(2)(b) may constitute grounds for revocation of the superintendent's certificate.

Section 2. Revocation proceedings shall be automatically initiated on receipt of a report on a certificate holder under the following conditions:

(1) Conviction of a felony.

(2) Conviction on any charge involving sexual misconduct.

(3) Conviction on any charge involving child abuse.

(4) Conviction on any misdemeanor where a student is involved.

(5) Providing false information on a certificate application which affects the eligibility of the applicant for a Kentucky certificate and/or forged transcripts of credits.

(6) Termination, suspension, resignation or retirement for cause on grounds of willful neglect of duty, misconduct in office, or immorality.

(7) Revocation, suspension or denial of a certificate by another state for reasons and through procedures that are the same as, or substantially equivalent to, those permitting similar action in Kentucky.

(8) Admission of criminal conduct, such as that exemplified in plea bargaining. For purposes of this subsection, criminal conduct shall not mean actions in the nature of minor traffic violations, alcohol related misdemeanor convictions where no student or school related activity is involved or other conduct of similar nature.

Section 3. Investigation[~~, Determination of Probable Cause~~]. (1) Upon receiving a report as identified in Section 1 of this administrative regulation or KRS 161.120(2)(b), the board through the office of its executive secretary shall secure available documentation and information and cause an investigation relating to the cause for certificate revocation to be conducted.

(2) The board may [~~, or its designee, shall~~] make the determination that the report [~~does or~~] does not warrant a hearing for certificate revocation. [~~In making this determination, the board or its designee shall take into consideration the conditions outlined in Section 3 of this administrative regulation.~~

~~(3)(a) The designee of the board to make the determination of whether a report does or does not warrant a hearing for certificate revocation shall be composed of three (3) members, as follows:~~

~~1. The Associate Commissioner of the Office of Teacher Education and Certification;~~

~~2. The Director of the Division of Teacher Certification; and~~

~~3. A certified teacher appointed by the board.~~

~~(b) These persons shall serve on a committee styled the Probable Cause Screening Committee ("committee") and shall meet on a periodic basis to consider pending revocation cases.~~

~~(c) The committee shall submit a written recommendation to the board for each case considered on the issue of whether a hearing for certificate revocation is or is not warranted.~~

~~(d) The board shall consider the written recommendations of the committee and shall have discretion to accept or reject the recommendations.~~]

(3) [~~(4)(a)~~] If the board determines that a hearing is not warranted, written notice of the decision shall be forwarded to the certificate holder. A copy of the notice shall be forwarded to the party initiating the complaint.

[~~(b) If the board determines that a hearing is warranted, written notice of the decision shall be forwarded to the certificate holder. A copy of the notice shall be forwarded to the party initiating the complaint. The notice provided for under this section shall not be construed as board action to initiate hearing proceedings or as the statement of charges or notice of hearing required by KRS 161.120(3)(a) or subsection (5)(a) of this section.~~]

(4) [~~(5)~~](a) Statement of charges and notice of hearing. [~~Upon taking action~~] To initiate hearing proceedings to revoke a certificate, the board shall provide the certificate holder with a written statement specifying in detail the charge(s) against the certificate holder and setting a time and date for the hearing pursuant to KRS 161.120(3)(a). This notice shall be forwarded to the certificate holder and the complainant by certified mail.

(b) The written statement of charges against the certificate holder shall set forth in ordinary and concise language the act(s) or omission(s) with which the certificate holder is charged to the end that the certificate holder will be able to prepare a defense.

1. The statement shall also notify the certificate holder of the date, time and location of the hearing. [~~The hearing shall take place no less than twenty (20) days nor more than forty five (45) days after the certificate holder receives the statement of charges.~~]

2. The statement of charge(s) shall include or be accompanied by:

a. A copy of KRS 161.120;

b. 704 KAR 20:585;

c. A statement that a failure to appear at the hearing, in person or by counsel, shall constitute a waiver of the right to a hearing and that the hearing officer or board may proceed upon the charge(s) without a hearing and in the absence of the certificate holder; and

d. A statement that the certificate may be revoked or suspended without a hearing upon written agreement by the certificate holder to voluntarily surrender his certificate(s).

(5) [~~(6)~~] Service. The written statement of charges shall be served personally or by certified mail. Service by certified mail shall be effective if a statute or administrative regulation requires the certificate holder with a revocation complaint pending before the board to file his current address with the board and to notify the board of any change in address, and if a certified letter containing the statement of charge(s) is mailed, addressed to the certificate holder at the latest address on file with the board.

(6) [~~(7)~~] Amendment of charges. At any time before the matter is submitted for final decision, the statement of charge(s) may be amended or supplemented. All parties shall be notified of the filing of an amended or supplemental charge(s). If the amended or supplemental statement of charge(s) presents new charges, the certificate holder shall be afforded a reasonable opportunity not less than thirty (30) days to prepare his defense. Any new charges shall be deemed controverted and any objections to the amended or supplemental charges shall be in writing and shall be noted in the record.

(7) [~~(8)~~] The hearing shall be conducted pursuant to KRS 161.120(3)(a).

(8) [~~(9)~~] The executive secretary of the board shall determine the date, time and place of the hearing pursuant to KRS 161.120(3)(a). Unless otherwise ordered or agreed, the hearing shall be held at the Kentucky Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.

Section 4. Notice Returned or Undeliverable. If the notice of charges and hearing date is returned as undeliverable and the board is otherwise unable to serve the notice of charges and hearing date on the certificate holder, the charges supporting the revocation proceeding shall not be dismissed. The fact of the pending revocation proceeding and the supporting charges shall be noted in the certificate holder's certification record on file with the Office of Teacher Education and Certification and shall be communicated to all Kentucky school superintendents, to all state directors of teacher education and certification and to the NASDTEC-CAA Clearinghouse operated by the National Association of State Directors of Teacher Education and Certification.

Section 5. Continuances. (1) A certificate holder may request a continuance of the scheduled revocation hearing for good cause

shown. The request shall be in writing and shall state the reason for the continuance. The request shall be filed with the board, through the office of the executive secretary, at least five (5) days prior to the scheduled hearing. Copies of the request for continuance shall be mailed to all parties by the certificate holder. The executive secretary shall forward a copy of the request for continuance to the hearing officer.

(2) An objection to a requested continuance shall be filed in writing and shall state the reason for the objection. Any objection shall be filed with the board, through the office of the executive secretary, at least five (5) days prior to the scheduled hearing. Copies of the objection to request for continuance shall be mailed to all parties, including the hearing officer appointed by the board, if any.

(3) A continuance may be granted for good cause shown.

(4)(a) If the scheduled revocation hearing is to be heard before a hearing officer appointed by the board, the request for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the executive secretary shall sign and transmit to all parties an interim order either granting or denying the continuance. If the continuance is granted, the interim order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally until further orders.

(b) If the scheduled revocation hearing is to be conducted by the board, the request for continuance shall be ruled on by the executive secretary of the board.

Section 6. Prehearing Procedures. (1) All motions, requests or filings shall be in writing, filed with the board through the office of the executive secretary, and served on all parties. The executive secretary shall forward copies of motions, requests or filings to the hearing officer.

(2) An interim order by the hearing officer shall be signed and transmitted by the executive secretary to all parties upon the direction of the hearing officer. Interim orders shall not be reviewable by the board except on final review.

(3) If a certificate holder retains counsel to represent him at the revocation hearing, the attorney shall file a written entry of appearance. All future notices, correspondence and orders shall be transmitted to that attorney and all future filings, motions or requests shall be submitted by that attorney on behalf of the certificate holder.

(4) A certificate holder with a pending revocation complaint shall submit written notice to the board through the office of its executive secretary of any change in address during the pendency of revocation proceedings.

(5) A list of witnesses who may be called to testify shall be filed with the executive secretary of the board by each party at least five (5) days prior to the hearing. Failure of either party to file a witness list within the prescribed time shall restrict the party to calling witnesses for rebuttal only.

(6)(a) Subpoena and subpoena duces tecum forms shall be issued at the request of any party by the chief state school officer. Copies of the subpoena forms shall be mailed to the certificate holder with the Statement of Charges and Notice of Hearing. Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.

(b) Witnesses appearing pursuant to KRS 161.120(3)(b) shall receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in a civil action. Fees, mileage and expenses shall be paid by the party at whose request the witness is subpoenaed. The certificate holder shall be informed of fees and mileage expenses prescribed by law for witnesses.

(7) Deposition of witnesses.

(a) The testimony of any material witness may be taken by deposition for good cause shown and upon written authorization by the hearing officer or by the executive secretary of the board if the full board is scheduled to conduct the hearing.

(b) The party requesting the deposition shall file a written request setting forth the name and address of the witness whose testimony is desired, a showing of the nature and materiality of the testimony, a showing that the witness will be unable or cannot be compelled to attend; and shall request an interim order requiring the witness to appear and to testify by deposition. The cost of the deposition shall be paid by the party requesting the deposition.

(c) The request for deposition shall be filed no less than ten (10) days prior to the hearing. Any objections shall be filed no less than five (5) days prior to the hearing. Copies of the request and any objection shall be mailed to all parties.

(8) The hearing officer may schedule a prehearing conference to define the issues, determine which facts, if any, can be stipulated, rule on pending motions or requests and address any other matter which will facilitate the hearing.

(9) The executive secretary, attorney for the board and board staff may participate in ex parte communications concerning pending and impending proceedings before the board relating to:

(a) Procedural questions; and

(b) Scheduling of hearings.

(10) If the hearing is to be conducted by the board, the executive secretary shall be authorized to grant or deny all prehearing motions. Except in extraordinary circumstances, the executive secretary shall not rule on prehearing motions to dismiss or similar motions which can be delayed until the time of the hearing.

(11) Discovery. In addition to the exchange of witness lists, either party is entitled to inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) The written statement of any witness, other than the certificate holder, proposed to be called by a party and of witnesses having personal knowledge of the acts or events which are the basis for the proceeding;

(b) All writings, including reports of mental, physical and blood examinations and other documents proposed to be offered into evidence;

(c) Any other writing or thing which is relevant and which would be admissible in evidence and which is not otherwise exempt from disclosure. A reasonable fee for reimbursement of the actual cost of producing or copying the documents may be charged by the party from whom the evidence is sought.

(d) For the purpose of this section, "statement" includes written statements by the person signed or otherwise authenticating the writing, stenographic, electrical recordings, or transcripts thereof, of oral statements by the person.

Section 7. Conduct of Hearing. (1) Unless otherwise authorized by the Education Professional Standards Board, the board shall use the hearing officer to hear all cases, to make findings of fact, conclusions of law, and recommended orders to the board for a decision. The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing, including prehearing motions. He shall require an orderly and proper decorum at the hearing, shall be authorized to restrict the number of witness and to set a reasonable time limit on the length of the hearing, and shall be authorized to require compliance with his rulings.

(2)(a) If the board hears a case, a legal adviser provided by the Office of the Attorney General shall preside at the hearing and advise the board on matters of law. The board itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the legal adviser, including the admission and exclusion of evidence.

(b) The legal adviser shall remain with the board during its deliberations, but shall not engage in deliberations, or in the discussions of the facts or the factual findings. The legal adviser may respond to questions regarding legal issues and assist the board in the drafting and final wording of the findings of fact, conclusions of

law and order.

(3) A hearing officer or a member of the board shall voluntarily disqualify himself and withdraw from any case in which he cannot afford the certificate holder a fair and impartial hearing. The parties may conduct a voir dire of the board members or hearing officer. Any party may request the disqualification of a hearing officer or a board member and shall state with particularity the grounds upon which it is claimed that there is bias or prejudice and that a fair and impartial hearing cannot be afforded. When the request concerns a board member, the question shall be determined by the other members of the board. When the request concerns a hearing officer, the question shall be determined by the executive secretary of the board.

(4) Evidence.

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights to:

1. A trial-type hearing;
2. Conduct a voir dire;
3. Call and examine witnesses;
4. Introduce exhibits;
5. Cross-examine opposing witnesses on any matter relevant to the issues;
6. Impeach any witness regardless of which party first called the witness to testify; and
7. Rebut evidence.

(c) If the certificate holder does not testify in his behalf, he may be called and examined as if under cross-examination. Upon motion by either party and authorization by the board or the hearing officer, either party may submit rebuttal evidence by deposition either party after the hearing is adjourned for good cause shown. The introduction of testimony taken in this manner shall be limited to rebuttal testimony only and shall be submitted within a defined time frame as ordered by the board or the hearing officer.

(d) The hearing shall not be conducted according to technical rules relating to evidence and witnesses. The formal rules of evidence and civil procedure shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which reasonably prudent persons rely in the conduct of their serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.

(e) Upon a showing of unavailability or other good cause, the testimony of any witness previously examined under oath or affirmation in a criminal, civil or administrative adjudicatory action and recorded by audio, video or written transcription, subject to cross-examination by the certificate holder, may be presented by either party in lieu of oral testimony. A request to substitute the oral testimony of any witness shall be submitted in writing to the hearing officer, or if the board is to hear the case, to the executive secretary of the board, at least ten (10) days prior to the hearing. The opposing party may file written objections setting forth in detail the reason for the objection at least five (5) days prior to the hearing.

(f)The proceedings and evidence presented shall be recorded by a court reporter.

(5) Administrative notice. In reaching a decision, the board or hearing officer may take official notice of cognizable facts which may be judicially noticed by the courts of Kentucky and of any generally accepted technical and scientific matter. Board members or the hearing officer may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to in the record, or appended to the record. Any [~~such~~] party shall be given a reasonable opportunity on request to refute the officially noticed matters of evidence by evidence or by written or oral presentation or authority. The board or its hearing officer shall determine the manner by which a party may refute the officially noticed matter.

Section 8. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare within thirty (30) days after the case is submitted a recommended order, including findings of fact and recommendations, based on the evidence, facts, and information presented at the hearing and contained in the record. The recommended order shall be in such form that it may be adopted as the decision in the case.

(2) The recommended order shall be issued at the direction of the hearing officer through the office of the board's executive secretary. A copy shall be mailed by means of certified mail, return receipt requested, by the executive secretary to each party or upon his attorney if represented by counsel.

(3) Any party may submit written exceptions to the hearing officer's findings of fact and recommended order. Exceptions shall be filed with the board through the office of the executive secretary within ten (10) days following receipt of the recommended order. The hearing officer for good cause shown may order the period enlarged if request is made before expiration of the period originally prescribed. The length of the written exceptions shall be limited to ten (10) pages unless otherwise extended by permission of the hearing officer upon motion for extension by either party.

(4) Exceptions not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making its final decision. For the purpose of this section, written exceptions shall be considered to have been timely filed if postmarked on the date due.

Section 9. Board Review and Final Action. (1)(a) The board may adopt or reject the recommended order of the hearing officer in its entirety, or may increase or reduce the proposed period of revocation or suspension and adopt the balance of the recommended order.

(b) If the recommended order is rejected by the board as provided in paragraph (a) of this subsection, the board [~~itself~~] may decide the case upon the record, with or without taking additional evidence or may remand the case to the hearing officer for further action as deemed appropriate and ordered by the board. If additional evidence is introduced before the board, board members shall not vote on the final disposition of the case unless the member heard the additional evidence. The taking of additional evidence shall be completed no more than forty-five (45) days after the hearing officer's recommended order is submitted to the board for final action. The taking of additional evidence under this subsection shall not be construed as a violation of the time frame within which the original hearing under KRS 161.120(3)(a) shall take place.

(c) The board shall consider the hearing officer's recommended order at its next regularly scheduled public meeting following the filing of the recommended order and the parties' written exceptions.

(2) Following consideration by the board, a final order shall be entered disposing of the revocation matter within five (5) days following the public meeting, unless within that time the board commences proceedings to take additional evidence.

(3) If the board hears the case, the board shall issue its final decision within five (5) days following submission of the case. The order shall be prepared immediately upon final decision by the board, entered and served at the direction of the board by the executive secretary to the board. Copies of the order shall be served on all parties personally or by certified mail by the board through the office of its executive secretary. The final decision of the board shall become effective when the board enters the written final decision.

(4) Form of the decision. The decision shall be in writing and shall contain findings of fact, conclusions of law, a determination of the issues presented and penalty, if any.

Section 10. Defaults. The certificate holder's failure to appear at

the hearing shall constitute a waiver of the right to a hearing. The board or hearing officer may take action based upon the respondent's express admissions, the entry of a guilty plea or upon a finding of guilty in a criminal court of law, or upon evidence contained within the administrative record without a hearing and in the absence of the certificate holder.

Section 11. Revocation or Suspension Upon Voluntary Surrender. (1) The board may revoke or suspend a teaching certificate upon a voluntary surrender of the certificate. The revocation or suspension of the teaching certificate shall be for a defined period of time or for an indefinite period, and may be according to specified terms and conditions best adapted to protect the health, welfare and safety of school children and to rehabilitate [~~and/~~]or educate the certificate holder

(2) The executive secretary to the board, or designee, [~~is authorized to and~~] may negotiate the terms and conditions of the revocation or suspension upon voluntary surrender.

(3) A revocation or suspension upon voluntary surrender shall not be final until approved by the board. The written approval of the boards shall be in setting forth the terms and conditions of the revocation or suspension upon voluntary surrender. The written document shall further state that the certificate holder agrees that he is ineligible to hold a teaching certificate, that the surrender of the certificate is for cause, shall set forth findings of fact and that the certificate holder has surrendered the certificate voluntarily, knowingly and intelligently. The written document shall be signed by the certificate holder, his attorney, if any, the chairman of the board and the attorney for the board.

Section 12. Reinstatement of Certificate. (1) Any individual whose certificate has been revoked may file a written petition seeking reissuance of the teaching certificate which shall state the reasons the applicant believes himself to be suitable for reissuance.

(2) The board may schedule a hearing to determine if the applicant is suitable for reissuance of the teaching certificate. The hearing may be held before the board or before a hearing officer appointed by the board. If the petition is heard before a hearing officer, the hearing officer shall submit a written report to the full board stating findings of fact and a recommendation as to whether the certificate shall be reissued.

(3) The burden of proving suitability for reissuance shall rest on the applicant seeking reinstatement.

(4) The board's final decision shall state the reasons for denial of reinstatement or reissuance, and may include terms and conditions that the board reasonably deems appropriate to impose as a condition of reissuance.

(5) In addition to meeting the requirements of KRS 161.120(5), applicants for reissuance of a revoked certificate shall satisfy all current educational requirements for the certificate.

Section 13. Contempt. If any person disobeys or refuses any lawful order or refuses to respond to a subpoena or thereafter refuses to be examined, or is guilty of misconduct during the hearing, the board may certify the facts to the circuit court in and for the county where the proceedings were held and petition the circuit court to issue an order compelling the witness to obey the order of the board or to respond to the subpoena to appear and testify before the board. If the person disobeys the circuit order, the board may petition the circuit court for an order directing the person to appear before the court and to show cause why he should not be held in contempt. The order and a copy of the petition shall be served on that person. The same proceedings shall be held, the same penalties may be imposed and the person charged may purge himself of the contempt in the same way, as in the case of a person who has committed a contempt in the trial of a civil action before the circuit court.

Section 14. Application of Hearing Procedures in Sections 1 through 13 [~~14~~] of this Administrative Regulation to Denial of Initial or Renewal Application for a Certificate. (1) The due process hearing procedures described in Sections 1 through 13 [~~14~~] of this administrative regulation shall apply to the denial of an individual's initial application for a Kentucky teaching certificate where the facts indicate the applicant's unfitness to teach.

(2) The due process hearing procedures described in Sections 1 through 14 of this administrative regulation shall apply to the denial of an application for renewal where there is a complaint pending against the certificate holder before the board for certificate revocation

DANIEL GREEN, Chairman

APPROVED BY AGENCY: August 3, 1993

FILED WITH LRC: August 10, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on September 21, 1993, at 10 a.m. in the Conference Room, 21st Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 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.

Contact Person: Dr. Roland Goddu, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, 502 564-4606.

REGULATORY IMPACT ANALYSIS

Agency Contact: Akeel Zaheer

(1) Type and number of entities affected: All school district superintendents and any certified employee or certificate holder whose conduct may fall under provisions of KRS 161.120(1) and certificate holders whose conduct falls under the categories listed in KRS 161.120.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs related to reporting and costs associated with any legal and quasi legal proceedings prior to and after reporting.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effect upon competition: None

(b) Reporting and paperwork requirements: Report from superintendents on certified employees whose conduct may warrant revocation. Report will include specific information cited in KRS 161.120.

(2) Effects on the promulgating administrative body: Establish and administer legal and quasi legal procedure of receiving reports and rebuttal, investigate the report, notifying certificate holder, holding hearings and notifying appropriate entities of revocation action and updating certification.

(a) Direct and indirect costs or savings:

1. First year: None additional.

2. Continuing costs or savings: Approximately the same as above unless the workload increases.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reports and record-keeping related to the administration of the program as described above and outlined in this regulation.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The administrative regulation implements KRS 161.120 and sets up procedures for investigation of reports required by statute and conduct hearings and other procedures related to certificate revocation.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: N/A

TIERING: Was tiering applied: No. Reporting requirements and other procedures identified in KRS 161.120 and proposed regulation apply to all effected entities uniformly. Certification requirements are uniformly applicable to all individuals.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:200. Confined space entry.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: Pursuant to the authority granted to the Kentucky Occupational Safety and Health Standards Board by 338.051 and 338.061, the following administrative regulation is adopted. The function of this administrative regulation is to set forth minimum safety and health requirements for those employees who must enter confined spaces for the purposes of performing their duties in the course of their employment.

Section 1. Application and Scope. (1) This regulation applies only to those confined spaces, as defined in Section 2(1) of this administrative regulation, which are not specifically covered by other administrative regulations adopted by this chapter, such as:

(a) [~~803 KAR 2:020,~~] General industry standards, 29 CFR 1910;

(b) [~~803 KAR 2:027,~~] Maritime standards, 29 CFR 1915-1919; and

(c) [~~803 KAR 2:030,~~] Construction industry standards, 29 CFR 1926.

(2) This administrative regulation does not apply to agricultural production operations.

(3) This administrative regulation does not apply to employers in general industry who are covered by 29 CFR 1910.146, "Permit-required Confined Spaces", as adopted by 803 KAR 2:309.

(4) This administrative regulation does not preempt any specific applicable regulation.

Section 2. Definitions. (1) Confined space. A space having the following characteristics:

(a) Limited means for exit and entry; and

(b) Ventilation of the space is lacking or inadequate, allowing for the potential accumulation of toxic air contaminants, flammable or explosive agents, [~~and/~~]or depletion of oxygen.

(2) Emergency entry. Entry into a confined space necessitated by a sudden and unexpected condition requiring immediate action.

(3) Toxic air contaminants. Those substances listed in Subpart Z of 29 CFR 1910 as adopted by 803 KAR 2:020; and, whenever a substance is not listed in Subpart Z, those substances with exposure limits listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances."

(4) Lower explosive limit (LEL). The minimum concentration of gas or vapor below which propagation of flame does not occur on contact with a source of ignition.

(5) Zero mechanical state (ZMS). The mechanical state of a machine or equipment in which:

(a) Every power source that can produce a machine or equipment member movement has been locked/tagged out as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(b) Pressurized fluid (air, oil, or other) power lockoffs (shutoff valves), if used, will block pressure from the power source and will reduce pressure on the machine or equipment side port of that valve by venting to atmosphere or draining to tank;

(c) All accumulators and air surge tanks are reduced to atmospheric pressure or are treated as power sources to be locked/tagged out, as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(d) The mechanical potential energy of all portions of the machine or equipment is at its lowest practical value so that the opening of the pipe(s), tube(s), hose(s), or actuation of any valve or lever will not produce a movement which could cause injury;

(e) Pressurized fluid (air, oil, or other) trapped in the machine or equipment lines, cylinders, or other components is not capable of producing a machine motion upon actuation of any valve or lever;

(f) The kinetic energy of the machine or equipment members is at its lowest practical value;

(g) Loose or freely movable machine or equipment members are secured against accidental movement; and

(h) A workpiece or material support, retained or controlled by the machine or equipment, shall be considered as part of the machine or equipment if the workpiece or material can move or can cause machine or equipment movement.

(6) Agricultural production operation. Establishments engaged primarily in the production of crops [~~and/~~]or livestock.

Section 3. Confined Space Entry: Nonemergency and Nonrescue. Except as provided in Section 4 of this administrative regulation, entry into a confined space shall not be made unless the following procedures have been accomplished:

(1) All pipes, lines, or other connections which may carry harmful agents into the confined space have been disconnected or blocked by some means which assures complete closure. In continuous systems, such as but not limited to sewers or utility tunnels, where complete isolation is not possible, written safety procedures to ensure employees' safety and health shall be developed and administered.

(2) Fixed mechanical devices [~~and/~~]or equipment that are capable of causing injury shall be placed at zero mechanical state (ZMS). The electrical equipment, excluding lighting, shall be locked out [~~and/~~]or tagged out in accordance with National Fire Protection Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982.

(3) The internal atmosphere of the confined space shall be tested for oxygen content, flammable or explosive agents, [~~and/~~]or any toxic air contaminant(s) of which an employer, who is or should be reasonably familiar with the practices, procedures, and methods of operation in the industry, has or should have knowledge. If the oxygen content is less than nineteen and five-tenths (19.5) percent (148 mm Hg), or if the flammable or exposure agents are detected in excess of twenty-five (25) percent of the lower explosive limit (LEL), or if the toxic air contaminant(s) are present in levels which exceed allowable limits as set forth in 29 CFR 1910, Subpart Z as adopted by 803 KAR 2:020, and whenever a substance is not listed in Subpart Z, the exposure levels listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances," the following provisions apply:

(a) The confined space shall be ventilated until the unsafe condition(s) are eliminated, and the ventilation shall be continued as long as there is a possibility of recurrence of the unsafe condition(s) while the confined space is occupied by employee(s).

(b) If oxygen deficiency [~~and~~/]or toxic air contaminant level(s) cannot be eliminated by ventilation, or as an alternative to ventilation, employee(s) may be allowed to enter a confined space only with appropriate respiratory protection. Respirator usage shall be in accordance with the requirements of 29 CFR 1910.134 as adopted by 803 KAR 2:020. Respiratory protection shall be provided and maintained at no cost to employee(s). If a self-contained respirator is used, the wearer shall not be permitted to remain within the confined space, when the primary air system is depleted or being replaced. The reserve air supply shall be used only for escape purposes. Employee(s) shall be allowed to enter a confined space containing explosive or flammable agents exceeding twenty-five (25) percent lower explosive limits (LEL), only during emergency or rescue operations.

(4) Provisions shall be made for constant communications: visual, voice and/or other means, between employee(s) within the confined space and an employee in the immediate vicinity outside the confined space.

(5) Provision shall be made for rescue procedures, including rescue equipment and rescue training, as outlined in Section 4 of this administrative regulation.

(6) Ladders or other safe means shall be used to enter and exit confined spaces exceeding four (4) feet in depth.

Section 4. Confined Space Entry: Emergency and Rescue. (1) The employer shall establish a written procedure for emergency and rescue methods and operations covering all confined space entries. The procedure shall include at a minimum:

(a) An assessment of the hazard(s);

(b) Personnel required to perform the rescue or emergency entry;

(c) Precautions to be taken while in the confined space;

(d) Personal protective equipment to be used;

(e) Rescue equipment such as but not limited to respirators, life lines, safety belts, safety harnesses, wristlets, hoisting equipment when an employee must be lifted vertically, and other equipment; and

(f) Tools and other equipment to be used.

(2) The employer shall establish a training program to instruct affected employees in the procedures and practices for emergency and rescue confined space entry. The training shall be repeated annually or more often as needed. The employer shall maintain records of the most recent training program conducted. The records shall include the date(s) of the training program, the instructor(s) of the training program, and the employee(s) to whom the training was given.

(3) The employer shall assure that personnel with rescue training, basic first aid, and CPR, in the vicinity of the confined space are readily available to render emergency assistance as may be required.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 12, 1993

FILED WITH LRC: August 13, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1993 at 2 p.m., at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Ste. 4, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 24, 1993, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity tc 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. William L. Ralston, Kentucky Labor Cabinet, Office of Standards Development and Interpretation, 1047 U.S. 127 South, Ste. 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, William L. Ralston

(1) Type and number of entities affected: The revision to 803 KAR 2:200 affects all employers in the Commonwealth who are considered to be in general industry (as opposed to agriculture, maritime, or construction industries) and who have confined spaces, as defined in the regulation, in their facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: Any potential savings realized by those employers in general industry who are affected by this amendment will in all likelihood be used to come into compliance with 29 CFR 1910.146, "Permit-Required Confined Spaces", which is also proposed for adoption under separate regulation at this time.

2. Continuing costs or savings: See Item 1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There will be no additional factors regarding this revision which will increase or decrease costs. There will be no effect on competition as all employers in the general industry classification that have confined spaces in their facilities are affected.

(b) Reporting and paperwork requirements: This amendment does not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This amendment will not affect the promulgating administrative body.

(a) Direct or 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 additional reporting or paperwork requirements as a result of this amendment.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local government revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: An alternate proposal to this amendment was considered by the KyOSH Standards Board. Due to comments and facts presented both orally and in writing to the Standards Board at its regular meeting and at its committee meeting, which was held to study the issue of the safety and health of employees who are to enter confined spaces, it was determined that this amendment (which excludes employers in the general industry classification from having to comply with the current regulation), and the adoption of 29 CFR 1910.146 (which affects only those employers in general industry) was appropriate.

(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 the adoption of this amendment.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: The regulations of the Kentucky Occupational Safety and Health (KyOSH) Program affect all employers employing one (1) or more employees. It targets inspections toward those industries or firms that pose higher risks to worker safety and health or from which the KyOSH Program has received worker complaints.

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 KyOSH 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. This amendment exempts those employers classified to be in general industry (as opposed to the agriculture, maritime, or construction industries) from having to comply with 803 KAR 2:200.

3. Minimum or uniform standards contained in the federal mandate. Federal Occupational Safety and Health Administration (OSHA) standards regulating confined space entry for those in the construction and maritime industries are worded in broad, general terms. OSHA would invoke its "general duty clause" in regulating confined space entry for those employers in the agricultural industry. (The "general duty clause" mandates that each employer is to provide employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm.)

4. Will this administrative regulation impose stricter requirements or additional or different responsibilities or requirements, than those required by the federal mandate? The existing 803 KAR 2:200, as amended, does not impose stricter requirements or additional or different responsibilities or requirements than those of federal OSHA. This amended regulation is more definitive in directing the affected employers in the acceptable methods for employee entry into confined spaces than the broad, general federal mandates.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment will affect only those divisions or parts of local government which would control or have employees who enter confined spaces as defined by the regulation.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed amendment affects the occupational safety and health of those employees of local government who are to enter confined spaces.

4. How does this administrative regulation affect the local government or any service it provides? This amendment excuses local government from having to comply with this regulation, except in those instances when local government employees enter a confined space under construction or a confined space considered to be in maritime operations.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:309. Adoption of 29 CFR Part 1910.141-.149.

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 1910.141-.149 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 January 15, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.141(c)(2)(i) shall read as follows: "Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy."

(2) Amendment to 29 CFR 1910.145(f), "Accident Prevention Tags," as published in Federal Register, Volume 51, Number 182, September 19, 1986, is incorporated by reference.

(3) 29 CFR 1910.146, "Permit-required Confined Spaces", is incorporated by reference.

(4) Revision to 29 CFR 1910.147, as published in the Federal Register, Volume 54, Number 169, September 1, 1989, is incorporated by reference with the following additions, exceptions, and deletions:

(a) 29 CFR 1910.147(c)(2)(ii) is amended to read: "If an energy isolating device is capable of being locked out, the employer's energy control program under paragraph (c)(1) of this section shall utilize lockout."

(b) 29 CFR 1910.147(c)(3) is amended to read: "Full employee protection. (i) When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program."

(c) "Where tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment will be fastened at the same point at which the lock would have been attached."

(d) Revision to 29 CFR 1910.147, as published in the Federal Register, Volume 55, Number 183, September 20, 1990, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 12, 1993

FILED WITH LRC: August 13, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1993 at 2 p.m., at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Ste. 4, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 24, 1993, 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 canceled. 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. William L. Ralston, Kentucky Labor

Cabinet, Office of Standards Development and Interpretation, 1047 U.S. 127 South, Ste. 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, William L. Ralston

(1) Type and number of entities affected: This proposed regulation affects all employers in the Commonwealth classified to be in general industry (as opposed to the agricultural, maritime, or construction industries) who have confined spaces, as defined in the regulation, in their facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: The total cost of compliance for Kentucky employers affected by implementation of 29 CFR 1910.146 is impossible to determine as there are no numbers available as to how many employers have confined spaces, as defined in the regulation, in their facility. Costs to comply with 29 CFR 1910.146 for those employers in general industry now complying with the existing confined space entry regulation will be minimal. Equipment needed to monitor the atmosphere in confined spaces will have been purchased and basic training will have been accomplished. Employers will have to modify their current program to comply with the specifics of 29 CFR 1910.146 but this should require no additional expenditures for additional staff or equipment. For those employers who are not complying with the current standard, costs will be incurred in having personnel evaluate the workplace to determine if any spaces at the facility are permit-required confined spaces and for signs to identify those facilities. If the determination is made that employees of the employer will enter the permit-required confined spaces a permit space entry program must be written and implemented. Implementation of the program includes training affected supervisors, attendants, those who will actually enter the confined space, and possible rescue personnel. The cost of equipment to monitor the atmosphere in the confined spaces will be $1500-$2600. Costs incurred in the implementation of the program and training of personnel cannot be considered one time costs as the program must be continually evaluated and updated as does the training.

2. Continuing costs or savings: See Item 1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There will be no additional factors regarding this revision which will increase or decrease costs. There will be no effect on competition as all employers in general industry having confined spaces in their facility must meet the proposed requirements, those within the Commonwealth by this proposed regulation, those outside the Commonwealth must comply with the identical federal regulation.

(b) Reporting and paperwork requirements: This amendment does not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The proposed amendment will have no affect upon the promulgating administrative body. The proposed regulation will not significantly affect the time spent by the agency in inspecting an employer's facility or add to clerical duties, nor will savings be incurred as inspection time will not be decreased nor will clerical duties decrease.

(a) Direct or 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 additional reporting or paperwork requirements as a result of this proposed regulation.

(3) Assessment of anticipated affect on state and local revenues: This proposed regulation will not affect state or local government revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: An alternate proposal to this amendment was considered by the KyOSH Standards Board. Due to comments and facts presented both orally and in writing to the Standards Board at its regular meeting and at its Committee meeting, which was held to study the issue of the safety and health of employees who are to enter confined spaces, it was determined that the adoption of 29 CFR 1910.146 (which affects only those employers in general industry) was appropriate.

(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 the adoption of this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: The regulations of the Kentucky Occupational Safety and Health (KyOSH) Program affect all employers employing one (1) or more employees. It targets inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the KyOSH Program has received worker complaints.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one (1) 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 KyOSH 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. This proposed regulation requires the employers of Kentucky classified to be in general industry (as opposed to those in the agricultural, maritime, or construction industries) to comply with federal standards regulating confined space entry.

3. Minimum or uniform standards contained in the federal mandate. This proposed regulation adopts 29 CFR 1910.146, "Permit-Required Confined Spaces for General Industry", as published in the Federal Register, Volume 58, Number 9, January 14,1993.

4. Will this administrative regulation impose stricter requirements or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed regulation is identical to the federal regulation.

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed regulation will affect only those divisions or parts of local government that would have employees enter confined spaces.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the occupational safety and health of those employees of local government who would enter confined spaces.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this regulation is to clarify for the employer what the acceptable work practices and conditions must be before an employee may enter a confined space. The regulation will have no affect on services rendered by local government but will provide safer workplaces for those local government employees who must enter confined spaces. The regulations will have no affect on revenue. Costs to local government will not be anymore than has been addressed in the Regulatory Impact Analysis.

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 administrative 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.

(g) Amendments to 29 CFR 1910.1000, "Air Contaminants," as published in the Federal Register, Volume 57, Number 112, June 10, 1992, are incorporated by reference.

(h) Amendments to 29 CFR 1910.1000, "Air Contaminants," as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

(i) Amendments to 29 CFR 1910.1000, "Air Contaminants," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(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.

(m) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(n) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 57, Number 126, June 30, 1992, 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/m³	100 ug/m³	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 Copper, and Lead Casting	(2)	N/A	N/A
All Other Industries	(2)	N/A	June 11,1984

[1]Includes ancillary activities located on the same worksite.
[2] On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

(b) Revision to 1910.1025, as published in the Federal Register. Volume 54, Number 131, July 11, 1989 is incorporated by reference.

(c) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead," as published in Federal Register, Volume 55, Number 30, February 13, 1990, are incorporated by reference.

(d) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead," as published in Federal Register, Volume 56, Number 105, May 31, 1991, are incorporated by reference.

(5) Amendments to 29 CFR 1910.1027, "Cadmium," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(6) Amendments to 29 CFR 1910.1027, "Cadmium", as published in the Federal Register, Volume 55, Number 77, April 23, 1993, are incorporated by reference.

(7) 29 CFR 1910.1028, "Benzene," as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(8) [~~(7)~~] 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.

(9) [~~(8)~~] 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.

(10) [~~(9)~~] Amendments to 29 CFR 1910.1030, "Bloodborne Pathogens," as published in the Federal Register, Volume 57, Number 127, are incorporated by reference.

(11) [~~(10)~~] 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.

(12) [~~(11)~~] 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.

(13) [~~(12)~~] 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.]~~

(c) [~~(f)~~] Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in the Federal Register, Volume 57, Number 102, May 27, 1992, are incorporated by reference.

(d) [~~(g)~~] Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in the Federal Register, Volume 57, Number 112, June 10, 1992, are incorporated by reference.

(14) [~~(13)~~] 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.

(15) [~~(14)~~] Amendments to 29 CFR 1910.1050, "Methylenedianiline," as published in the Federal Register, Volume 57, Number 154, August 10, 1992, are incorporated by reference.

(16) [~~(15)~~] Amendments to 29 CFR 1910.1101, "Asbestos," as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(17) [~~(16)~~] 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

(18) [~~(17)~~] 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.

(19) [~~(18)~~] Amendments to 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories," as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference

(20) [~~(19)~~] Amendments to 29 CFR 1910.1500, "Standards Organizations," as published in the Federal Register, Volume 57, Number 127, July 1, 1992, 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.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 12, 1993

FILED WITH LRC: August 13, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1993 at 2 p.m., at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Ste. 4, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 24, 1993, 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 canceled. 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: Ms. Erin Foley, Kentucky Labor Cabinet, Office of Standards Development and Interpretation, 1047 U.S. 127 South, Ste. 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, Erin Foley

(1) Type and number of entities affected: Section 1(6) will affect all general industry employers in the Commonwealth with operations involving exposure to cadmium. Section 1(13)(c)-(e) will affect all general industry employers in the Commonwealth with operations involving exposure to formaldehyde.

(a) Direct and indirect costs or savings to those affected: Section 1(6) will have no costs or savings. The purpose of this amendment is to correct typographical errors. Section 1(13)(c)-(e) will have no costs or savings. The purpose of this amendment is to delete amendments because they were added accidently.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this section which will increase or decrease costs. There will be no effect on competitors.

(b) Reporting and paperwork requirements: This section will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This amendment will not affect the promulgating administrative body.

(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 this regulation.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues

(4) Assessment of alternative methods; reasons why alternative were rejected: No alternative methods were considered because the federal 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

Agency Contact: Kembra Taylor, Erin Foley

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(6) regulation requires Kentucky general industry employers to comply with federal standards governing exposure to cadmium.

3. Minimum or uniform standards contained in the federal mandate. Section 1(6) amendment adopts all standards contained in the Federal Register, Volume 58, Number 77, April 23, 1993.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the amendment to the Federal Register identified in item three above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 1(6) affects all local government entities that are within the scope of the cadmium standard.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health in regard to their exposure to cadmium.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will have no effect on the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.63.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1926.50-.63, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1926.58, "Asbestos, Tremolite, Anthophylite, and Actinolite," as published in the Federal Register, Volume 51, Number 119, June 20, 1986 is adopted by reference with the following amendments:

(a) 29 CFR 1926.58(e)(6)(iii) is amended to read: "The employer shall ensure that contractors provide in writing that they have a competent person meeting the requirements of paragraph (b) "competent person" and paragraphs (e)(6)(ii) and (III) before work commences."

(b) 29 CFR 1926.58(f)(3) is amended to read: "The respirators required by this exception are to be Type "C" supplied - air respirators; continuous flow or pressure - demand class."

(c) 29 CFR 1926.58(f)(5)(ii) is amended to read: "The employer shall ensure that all sampling is conducted in accordance with the ORM in Appendix A before sampling commences."

(d) 29 CFR 1926.58(f)(5)(iii) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the qualifications listed in Appendix A. This notice shall be given prior to the start of the analyses."

(e) 29 CFR 1926.58(h)(3)(i) is amended to read: "Where respiratory protection is used, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(f) 29 CFR 1926.58(j)(2)(I) is amended to read: "The decontamination area shall be separated from the regulated area by an air lock. Air locks shall be used to separate the clean room, shower area and equipment room. An "air lock" is an open area used to separate the clean room, shower room and equipment room from each other; and to separate the decontamination area from the work area. It is accessible through doorways protected by two overlapping polyethylene sheets."

(g) 29 CFR 1926.58(k)(I)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (k)(I)(i) of this section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(h) 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(i) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(j) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.

(k) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 54, Number 243, December 20, 1989, is incorporated by reference.

(l) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 55, Number 24, February 5, 1990, is incorporated by reference.

(m) Amendments, revisions and additions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(n) Amendments to 29 CFR 1926.58, "Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(2) 29 CFR 1926.59, "Hazard Communication," as published in Federal Register, August 24, 1987, Volume 52, Number 163, is incorporated by reference.

(3) Amendments to 29 CFR 1926.60, "Methylenedianiline," as published in the Federal Register, Volume 57, Number 154, August 10, 1992, are incorporated by reference.

(4) Amendments to 29 CFR 1926.62, "Lead in Construction; Interim Final Rule", as published in the Federal Register, Volume 58, Number 84, May 4, 1993, are incorporated by reference.

(5) Amendments to 29 CFR 1926.63, "Cadmium," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(6) Amendments to 29 CFR 1926.63, "Cadmium," as published in the Federal Register, Volume 58, Number 77, April 23, 1993, 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.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 13, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1993 at 2 p.m., at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Ste. 4, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 24, 1993, 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 canceled. 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: Ms. Erin Foley, Kentucky Labor Cabinet, 1047 U.S. 127 South, Ste. 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, Erin Foley

(1) Type and number of entities affected: Section 1(4) will affect all construction industry employers in the Commonwealth with operations involving exposure to lead. Section 1(6) will affect all construction industry employers in the Commonwealth with operations involving exposure to cadmium.

(a) Direct and indirect costs or savings to those affected: Section 1(6) will have no costs or savings. The purpose of this amendment is to correct typographical errors.

1. First year: The annual cost to comply with Section 1(4) will vary by establishment, from $167 per worker for carpentry work to $5,019 per worker for glass products manufacturer.

2. Continuing costs or savings: Compliance with Section 1(4) can only be estimated on a per job basis.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this section which will increase or decrease costs. There will be no effect on competitors.

(b) Reporting and paperwork requirements: This section will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This amendment will not affect the promulgating administrative body.

(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 this regulation.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: No alternative methods were considered because the federal 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 (1) 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(4) of this regulation requires Kentucky construction industry employers to comply with federal standards governing exposure to lead. Section 1(6) regulation requires Kentucky construction industry employers to comply with federal standards governing exposure to cadmium.

3. Minimum or uniform standards contained in the federal mandate. Section 1(4) amendment adopts all standards contained in the Federal Register, Volume 58, Number 84, May 4, 1993. Section 1(6) amendment adopts all standards contained in the Federal Register, Volume 58, Number 77, April 23, 1993.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the amendment to the Federal Register identified in item three above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 1(4) affects all local government entities that are within the scope of the lead in construction standard. Section 1(6) affects all local government entities that are within the scope of the cadmium in construction standard.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health in regard to their exposure to lead and cadmium in the construction industry.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will have no effect on the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:500. Adoption of 29 CFR Part 1915, 1917, 1918 and 1919, Maritime employment.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national 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 Maritime employment.

Section 1. The Occupational Safety and Health Standards Board hereby incorporates Chapter 29, Part 1915 as published in the April 20, 1983, Federal Register, Part 1917 as published in July 5, 1983, Federal Register, and Parts 1918 and 1919 of the Code of Federal Regulations, revised as of July 1, 1981, 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 1915.1, 1918.1, and 1919.1 shall read as follows: "The provisions of this regulation adopt and extend the applicability of established Federal Maritime Standards contained in 29 CFR 1915, 1916, 1917, 1918, and 1919 to all Maritime employers, Maritime employees, and places of Maritime employment throughout the

Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR 1915.4(b) and 1918.3(b), "Secretary," means Secretary of Labor, Kentucky Labor Cabinet, Commonwealth of Kentucky, or his authorized representatives.

(3) 29 CFR 1919.2(D), "Assistant Secretary" is changed to read: "Secretary" means the Secretary of Labor, Kentucky Labor Cabinet, Commonwealth of Kentucky, or his authorized representative.

(4) 29 CFR 1915.97, "Health and Sanitation," is revised to read as follows: Revisions as published in the Federal Register, Volume 52, Number 163, August 24, 1987.

(5) 29 CFR 1915.99, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(6) Revision to 29 CFR 1915.113(b)(1), "Shackles and Hooks," as published in the Federal Register, Volume 51, Number 188, September 29, 1986 is incorporated by reference.

(7) Revision to 29 CFR 1915.172(d), "Portable Air Receivers and Other Unfired Pressure Vessels," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.

(8) Amendments to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(9) Amendments to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.

(10) 29 CFR 1917.1(a)(2)(x), "Marine Terminals," as published in the Federal Register, Volume Number 52, December 31, 1987, is incorporated by reference.

(11) [~~(9)~~] 29 CFR 1917.1(a)(2)(ix), "Scope and Applicability," as published in the Federal Register, Volume 52, Number 186, September 25, 1987 is incorporated by reference.

(12) [~~(10)~~] 29 CFR 1917.28, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(13) [~~(11)~~] 29 CFR 1917.44(o), "General Rules Applicable to Vehicles," shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are incorporated by reference.

(14) [~~(12)~~] 29 CFR 1917.72, "Grain Elevators," (reserved) as published in the Federal Register, Volume Number 52, December 31, 1987, is removed.

(15) [~~(13)~~] 29 CFR 1918.90, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(16) [~~(14)~~] 29 CFR 1919.2(e) "Administration" is changed to read: "Program" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.

(17) [~~(15)~~] An employer, required under 29 CFR 1915, 1918 or 1919 to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

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.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 12, 1993

FILED WITH LRC: August 13, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1993 at 2 p.m., at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Ste. 4, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 24, 1993, 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 canceled. 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: Ms. Erin Foley, Kentucky Labor Cabinet, 1047 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor

(1) Type and number of entities affected: Sections 1(8) and 1(9) affect all employers in the Commonwealth with operations involving exposure to cadmium in the shipyard industry. Section 1(9) is a typographical correction.

(a) Direct and indirect costs or savings to those affected:

1. First year: Compliance with Section 1(8) is expected to cost employers less than 0.1 percent of revenues.

a. Continuing costs or savings: Compliance with Section 1(8) is expected to cost employers less than 0.06 percent of revenues.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this section which will increase or decrease costs. There will be no effect on competitors.

(b) Reporting and paperwork requirements: This section will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This amendment will not affect the promulgating administrative body.

(1) First year:

(a) 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 this regulation.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: No alternative methods were considered because the federal 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 (1) 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 (9) require Kentucky shipyard industry employers to comply with federal

standards governing exposure to cadmium.

3. Minimum or uniform standards contained in the federal mandate. Section 1(8) amendment adopts all standards contained in the Federal Register, Volume 57, Number 178, September 14, 1992; Section 1(9) amendment adopts all standards contained in the Federal Register, Volume 58, Number 77, April 23, 1993.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the amendment to the Federal Register identified in item three above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 1(8) affects all local government entities that are within the scope of the cadmium standard in the shipyard industry. Section 1(9) involves typographical corrections and is not considered as a substantive amendment.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health in regard to their exposure to cadmium in the shipyard industry.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will have no effect on the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:600. Adoption of 29 CFR Part 1928.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national 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 agriculture.

Section 1. The Occupational Safety and Health Standards Board hereby incorporates Chapter 29, Part 1928 of the Code of Federal Regulations revised as of July 1, 1981, 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 1928, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(2) 29 CFR Part 1928.1 shall read as follows: "This part contains Occupational Safety and Health Standards applicable to agriculture operations. The provisions of this regulation adopt and extend the applicability to established federal standards contained in 29 CFR Part 1928 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(3) 29 CFR "Field Sanitation," as published in the Federal Register, Volume Number 52, May 1, 1987, is incorporated by reference.

(4) Amendments to 29 CFR 1928.1027, "Cadmium", as published in the Federal Register, Volume 58, Number 77, April 23, 1993, 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.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 13, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1993 at 2 p.m., at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Ste. 4, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 24, 1993, 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 canceled. 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: Ms. Erin Foley, Kentucky Labor Cabinet, 1047 U.S. 127 South, Ste. 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, Erin Foley

(1) Type and number of entities affected: Section 1(4) affects all employers in the Commonwealth with operations involving exposure to cadmium in the agricultural industry.

(a) Direct and indirect costs or savings to those affected:

1. First year: Compliance with Section 1(4) is expected to cost employers less than 0.1 percent of revenues.

2. Continuing costs or savings: Compliance with Section 1(4) is expected to cost employers less than 0.06 percent of revenues.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this section which will increase or decrease costs. There will be no effect on competitors.

(b) Reporting and paperwork requirements: This section will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This amendment will not affect the promulgating administrative body.

(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 this regulation.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local

revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: No alternative methods were considered because the federal 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 (1) 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(4) requires Kentucky agricultural industry employers to comply with federal standards governing exposure to cadmium.

3. Minimum or uniform standards contained in the federal mandate. Section 1(4) amendment adopts all standards contained in the Federal Register, Volume 58, Number 77, April 23, 1993.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the amendment to the Federal Register identified in item three above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 1(4) affects all local government entities that are within the scope of the cadmium standard in the agricultural industry.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health in regard to their exposure to cadmium in the agricultural industry.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will have no effect on the number of local government employees.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(Proposed Amendment)

808 KAR 10:160. Definitions.

RELATES TO: KRS Chapter 292
STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY AND FUNCTION: To clarify and define terms used in KRS Chapter 292 and rules and regulations promulgated thereunder.

Section 1. Definitions. When used in KRS Chapter 292 and the rules and regulations promulgated thereunder unless the context otherwise requires:

(1) "Assistant representative - order processing" means a person associated with a broker-dealer who accepts unsolicited customer orders for submission for execution by the broker-dealer and upon requests from customers provides market quotes.

(2) "Current financial statement" means a balance sheet of the issuer as of a date within four (4) months prior to the filing of the claim of exemption, a profit and loss statement for the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements that would be required if that business were the issuer. The profit and loss statement shall be audited by an independent, certified public accountant for the latest fiscal year presented.

(3) [~~(2)~~] "Investment intent" or "purchasing for investment" means that securities cannot be purchased with a view to, or for resale in connection with, any distribution. Securities purchased with investment intent cannot be disposed of unless the securities are registered under KRS Chapter 292 or an exemption from the registration requirements of such chapter is available. As a result, the purchaser of these securities must be prepared to bear the economic risk of the investment for an indefinite period of time and have no need of liquidity of the investment. Where securities are purchased under KRS Chapter 292 for investment, investment intent shall be presumed if the purchaser retains such securities for two (2) years from the date of consummation of the sale. However, any disposition of the securities within two (2) years of the date of purchase, in the absence of an unforeseeable change of circumstances, shall create a presumption that the person did not purchase the securities with investment intent.

(4) [~~(3)~~] "Promotional company" means:

(a) A corporation which has no substantial public market for its shares as evidenced by the number of market makers and the trading volume and also has no significant earnings; or

(b) A corporation which has no public market for its shares and no justification for its proposed public offering price on the basis of past earnings.

(5) [~~(4)~~] "Subsidiary" means an affiliate controlled or significantly influenced by the issuer directly, or indirectly through one (1) or more intermediaries.

(6) [~~(5)~~] "Significant subsidiary" means a subsidiary meeting any one (1) of the following conditions:

(a) The assets of the subsidiary, or the investments in and advances to the subsidiary by the issuer and the issuer's other subsidiaries, if any, exceed ten (10) percent of the assets of the issuer and its subsidiaries on a consolidated basis;

(b) The sales and operating revenues of the subsidiary exceed ten (10) percent of the sales and operating revenues of the issuer and its subsidiaries on a consolidated basis;

(c) The subsidiary is in control of or can significantly influence one (1) or more other subsidiaries and, together with such subsidiaries would, if considered in the aggregate, constitute a significant subsidiary.

EDWARD B. HATCHETT, JR., Commissioner
APPROVED BY AGENCY: August 10, 1993
FILED WITH LRC: August 13, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on September 21, 1993 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, five days prior to the hearing, of their intent to attend. If not notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Lewis Kelly, Division of Law and Regulatory Compliance, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, (502) 564-3390.

REGULATORY IMPACT ANALYSIS

Agency Contact: Lewis Kelly

(1) Type and number of entities affected: Approximately 50 broker-dealers could be affected.

(a) Direct and indirect costs or savings to those affected: There would be no 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: Minimal

(a) Direct and indirect costs or savings: Minimal

1. First year: Minimal

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There would be a slight increase in paperwork.

(3) Assessment of anticipated effect on state and local revenues: Very minimal.

(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: 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. Not applicable.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 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. The function of this administrative regulation is to allow the department to permit the use of new parts and materials without amending specific administrative regulations for each new item. This administrative regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to effectuate department policy in accordance with KRS Chapter 13A. This product was approved by the Plumbing Code Committee at their August 2, 1993 meeting.

Section 1. Definitions. (1) "APML" means the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" means the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) Any part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) Any part or material shall not be used in drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate

efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in

plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through eighteen (18) inches for underground storm water drainage within a building.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: August 5, 1993

FILED WITH LRC: August 11, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, September 22, 1993 at 9 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 September 17, 1993, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings because the regulation only establishes acceptability of previously unapproved products. Provides ability of manufacturer to market his product in state.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: Paperwork requirements and recordkeeping needs remain the same; no costs or savings involved.

(2) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Unchanged by this amendment.

(3) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(5) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Fire Prevention
(Proposed Amendment)

815 KAR 35:030. Kentucky certification of electrical contractors.

RELATES TO: KRS 227.450 through 227.500

STATUTORY AUTHORITY: KRS 227.4901 [~~House Bill 76~~]

NECESSITY AND FUNCTION: In 1990, the General Assembly enacted KRS 227.4901 which [~~House Bill 76 of the 1990 Session of the General Assembly~~] requires that the Department of Housing, Buildings and Construction select and approve an examination designed to determine the competency of electrical contractors under the National Electrical Code, to certify those individuals passing the examination and to collect and compile reports on disciplinary actions taken against licensed electrical contractors by cities and counties. This administrative regulation is necessary in order to establish procedures of administration and reasonable fees to carry on the certification program. This amendment is necessary to remove the antiquated grandfather clause and to clarify the penalty for failure to renew certification on a timely basis.

Section 1. Definitions. (1) "Department" means the Department of Housing, Buildings and Construction.

(2) "NAIE" means the examination based upon the National Electrical Code which is developed, administered and scored by the National Assessment Institute.

(3) "NCPCCI" means the National Certification Program for Construction Code Inspectors.

(4) "Kentucky Certificate of Electrical Contractor Examination" means the written document issued by the department which certifies that the person whose name is listed thereon has successfully completed the examination required by this administrative regulation.

Section 2. Approved Examinations. (1) After the effective date of this amendment, any person seeking to obtain a Kentucky Certificate of Electrical Contractor Examination shall pass the examination known as the NAIE[~~, except as allowed by subsection (2) of this section.~~

~~(2) Grandfather clause. Any person who is both licensed by any city or county on the effective date of this regulation and who also has previously received a passing grade on one (1) of the following examinations shall be certified upon request as provided by this regulation:~~

~~(a) Educational Testing Services Examination (multistate electrical testing); or~~

~~(b) Block and Associates Examination; or~~

~~(c) NCPCCI Electrical Inspector, General, Examination; or~~

~~(d) Any other electrical examination not listed in subsections (1) or (2)(a) through (c) of this section, if, upon advice of the Electrical Advisory Committee, the department determines that the examination is substantially equivalent to NAIE.~~]

(2) [~~(3)~~] The department shall issue or renew a Kentucky Certificate of Electrical Contractor Examination to any person who complies with the terms of this administrative regulation.

Section 3. Proof of Insurance. (1) An applicant shall [~~may~~] submit to the department proof of $250,000 liability insurance for electrical construction work by certificate from the insurance company and he shall [~~may~~] also submit an affidavit verifying compliance [~~that he complies~~] with Kentucky worker's compensation and unemployment insurance laws.

(2) If the applicant submits [~~all the~~] proof of insurance as set forth in subsection (1) of this section, the department shall [~~will~~] indicate that fact on the applicant's certificate. This proof shall be submitted annually, upon renewal, in order to continue to be noted upon the certificate.

Section 4. Application for Certificate. (1) Application shall be made to the department by the individual seeking certification on forms as outlined in Section 6 of this administrative regulation.

(2) The original application shall be [~~on forms provided by the department and shall be~~] accompanied by a fee [~~in the sum~~] of $100 to cover the administrative costs of processing the application, verifying examination scores and issuing certificates.

(3) Each person seeking certification pursuant to this administrative regulation shall be required to pay an additional annual renewal fee in the sum of twenty-five (25) dollars no later than June 30 of each year in order to maintain his certification. Failure to renew shall require the applicant to pay the renewal fee and to requalify, pursuant to [~~reexamination and compliance with~~] this administrative regulation as a new applicant for certification.

(4) The Kentucky Certificate of Electrical Contractor Examination is not a license to do business as an electrical contractor.

Section 5. Notice of Penalty. Any certificate or notation of insurance obtained by misrepresentation or fraudulent representation shall void the certificate or notation.

Section 6. Electrical Contractor Certification Application Forms. (1) Application for electrical contractor certification.

COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION
APPLICATION FOR
ELECTRICAL CONTRACTOR CERTIFICATION

NAME:
ADDRESS:
CITY: ZIP CODE:
TELEPHONE #: DATE OF BIRTH:
COMMONWEALTH OF KENTUCKY
COUNTY OF: SIGNED:
having been duly sworn, states all information herein contained is true and correct to the best of his knowledge and belief; and further states that he will comply with applicable statutes and rules and regulations of the Department of Housing, Buildings and Construction.
Subscribed and sworn to before me this day of , 19 . My commission expires:
Notary Public:
County:
NOTE: Attach check or money order for $100.00 payable to the State Treasurer, Commonwealth of Kentucky.
RETURN TO: Office of the State Fire Marshal
Electrical Contractor Certification Clerk
1047 U.S. 127 South, Suite #1
Frankfort, KY 40601-4337
OFFICE USE ONLY:

(2) Renewal application for electrical contractor certification.

CERTIFICATE #:
COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION
RENEWAL APPLICATION FOR
ELECTRICAL CONTRACTOR CERTIFICATION

NAME:
ADDRESS:
CITY: ZIP CODE:
TELEPHONE #: DATE OF BIRTH:
COMMONWEALTH OF KENTUCKY
COUNTY OF: SIGNED:
having been duly sworn, states all information herein contained is true and correct to the best of his knowledge and belief; and further states that he will comply with applicable statutes and the rules and regulations of the Department of Housing, Buildings and Construction.
Subscribed and sworn to before me this day of , 19 . My commission expires:
Notary Public:
County:
NOTE: Attach check or money order for $25.00 payable to the State Treasurer, Commonwealth of Kentucky.
RETURN TO: Office of the State Fire Marshal
Electrical Contractor Certification Clerk
1047 U.S. 127 South, Suite #1
Frankfort, KY 40601-4337
OFFICE USE ONLY:

(3) Kentucky Workers' Compensation and Unemployment Insurance compliance.

COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION
Kentucky Workers' Compensation & Unemployment Insurance

* The use of this form is optional. If you want your wallet card to indicate compliance with insurance, unemployment insurance and workers' compensation laws, file this form and a copy of your insurance certificate along with your application.

The affiant herein does swear or affirm that he is in full compliance with Kentucky Workers' Compensation and Unemployment Insurance laws and that he has a valid liability insurance policy covering his business of electrical contracting and installation in the total amount of at least $250,000 as shown on the attached certificate from the insurance company.

Applicant:

STATE OF KENTUCKY
COUNTY OF:
Subscribed and sworn to me this day of , 19 .

Notary Public:
My commission expires:
*NOTICE: If this information is not provided, you shall provide it for every electrical permit you seek from the city or county.

* *

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: July 30, 1993
FILED WITH LRC: August 4, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, September 22, 1993 at 9 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 September 17, 1993, (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: Electrical contractors who desire state certification and any local government agency licensing electrical contractors and issuing permits for electrical wiring.
(a) Direct and indirect costs or savings to those affected:
1. First year: Electrical contractors - $100 for certification.
2. Continuing costs or savings: Electrical contractors - $25 renewal fee.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Proof of workers' compensation, unemployment insurance and liability insurance required for each permit.
(2) Effects on the promulgating administrative body: Little impact on promulgating agency beyond recordkeeping. Program supported by fees.
(a) Direct and indirect costs or savings:
1. First year: $100 fee per applicant.
2. Continuing costs or savings: $25 renewal fee per applicant.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Applications, certificates and personnel to review insurance compliance.
(3) Assessment of anticipated effect on state and local revenues: There is no direct impact by this administrative regulation because it is not a mandatory certification program. Local governments may license or not, but if they do, they must use department test.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Other tests were evaluated and this one was chosen upon advice of the Electrical Advisory Committee.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(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 exam should be the same for all.

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
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation affects local governments.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation requires any local government which chooses to license electrical contractors to accept and administer the particular test chosen by the

department if the local government requires examination as a condition of licensure.

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:

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

901 KAR 5:080. Delayed registration of deaths.

RELATES TO: KRS Chapter 213
STATUTORY AUTHORITY: KRS 194.050, 211.090, 213.091
NECESSITY AND FUNCTION: KRS Chapter 213 relating to Vital Statistics authorizes the Cabinet for Human Resources to register a delayed certificate of death. The purpose of this administrative regulation is to provide a uniform procedure for registering deaths which were not reported at the time of death in accordance with KRS 213.091 [~~213.110(3)~~].

Section 1. Delayed Registration of Deaths. The registration of a death after the time prescribed by KRS 213.091 [~~213.110(3)~~] shall be registered on the standard certificate of death form in the manner prescribed below:

(1) If the attending physician[~~, medical examiner~~] or coroner at the time of death and the attending funeral director or person who acted as such are available to complete [~~and sign~~] the certificate of death, it shall [~~may~~] be completed, [~~without additional evidence and~~] filed with the State Registrar of Vital Statistics[~~. However, certificates of death filed with the State Registrar of Vital Statistics one (1) year or more after the date of death shall be signed by the attending physician, medical examiner or coroner and the funeral director or person acting as such~~] and shall be accompanied by one (1) item of documentary evidence as specified in subsection (3) [~~(4)~~] of this section.

(2) In the absence of the attending physician[~~, medical examiner~~] or coroner and the funeral director or person who acted as such, the certificate may be filed by the next of kin of the deceased and shall be accompanied by:

(a) An affidavit of the person filing the certificate swearing to the accuracy of the information on the certificate; and

(b) Two (2) documents which identify the deceased and the date and place of death.

(3) [~~In the case of presumptive death, a certified copy of a court order finding that such death has occurred and the date and place of such death shall be received by the State Registrar of Vital Statistics before a death certificate can be filed.~~

~~(4)~~] In all cases, the State Registrar of Vital Statistics may require additional documentary evidence to prove the facts of death. Items of documentary evidence may be, but are not limited to, the obituary from a newspaper, or records from a funeral home showing services rendered decedent, or a medical record.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 14, 1993
FILED WITH LRC: August 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 21, 1993, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by September 16, 1993 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Barbara F. White
(1) Type and number of entities affected: None
(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: 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:
(6) Any additional information or comments: No revenue generated.

TIERING: Is tiering applied? No. Tiering does not apply because this administrative regulation does not create disproportional impact on a part, class, or division of the regulated entity.

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

(2) State what unit, part or division of local government this administrative regulation will affect. 901 KAR 5:080 contains sections relative to functions which may be performed by a county coroner (local elected official).

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation establishes procedures for the filing of delayed death certificates, which may be completed in part by the county coroner.

(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: Changes made in 901 KAR 5:080 will not affect current process.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

901 KAR 5:090. Burial[~~, transportation~~] and disinterment of dead bodies.

RELATES TO: KRS Chapter 213
STATUTORY AUTHORITY: KRS 194.050, 211.090, 213.076 [~~213.100, 213.110~~]
NECESSITY AND FUNCTION: KRS Chapter 213, relating to vital statistics, authorizes the Cabinet for Human Resources to regulate the [~~transportation,~~] disposal, and disinterment of dead bodies. The purpose of this administrative regulation is to establish uniform requirements for the [~~transportation,~~] interment, disinterment and reburial of dead bodies in Kentucky.

Section 1. [~~Burial Transit Permits (Provisional Report of Death). (1) In accordance with KRS 213.100 and 213.110, the funeral director, or person acting as such, shall procure a burial transit permit from the local registrar of vital statistics of the county where death occurred, prior to removal or disposition of the body. The permit shall grant permission for the transportation and burial or other disposition of the body. In the event the body is to be shipped by common carrier the local registrar shall issue the permit in duplicate and a copy shall accompany the body.~~

~~(2) A burial transit permit issued by the appropriate authority of another state accompanying a body shipped into Kentucky and a local burial permit issued by the local registrar shall be deemed permission for burial in this state. Such permit shall be signed by the sexton or other authorized official of the cemetery after burial and shall be filed with the local registrar of the county in which burial occurs.~~

~~(3) In the event a body is to be cremated, the funeral director, or person acting as such, shall so inform the local registrar of the county where death occurred, who shall obtain the approval of the coroner on the burial transit permit as a condition precedent to issuing it as required by KRS 213.125. The funeral director, or person acting as such, shall deliver a copy of the permit bearing the coroner's approval to the crematorium. The person in charge of the crematorium shall sign the permit in the space provided for the sexton's signature after the body is cremated and shall file the permit with the local registrar for the county in which the death occurred. No permit shall be required for the transportation or disposal of the cremated remains.~~

~~Section 2.~~] Interment. (1) Where the disposition of the body is by burial and the outer container for the body is made of concrete, metal, fiber glass, or other impervious material and it is hermetically sealed, all parts of such container shall be buried to a depth of at least two (2) feet below the level of the natural surface of the ground. All other burials shall be at least three (3) feet below the level of the natural surface of the ground measured from all parts of the outer container.

(2) Where impenetrable rock is encountered the local health department may, upon proper application, grant a variance to the depth of burial requirements of this administrative regulation.

(3) The depth of burial requirements of this administrative regulation do not apply where interment is in a mausoleum.

Section 2. [~~3.~~] Disinterment. (1) When one (1) or more bodies are to be disinterred for reburial in the same cemetery, a disinterment-reinterment permit shall be procured upon proper application from the local registrar.

(2) When one (1) or more bodies are to be disinterred for reburial in a different cemetery or for other disposal, an application for a disinterment-reinterment permit shall be made to the State Registrar of Vital Statistics. The application shall contain the following information:

(a) Name of deceased, if known;
(b) Date of death;
(c) Original grave site;
(d) Proposed grave site;
(e) Approximate date of removal;
(f) Name of the person or firm who will remove the body or bodies;
(g) A statement by the applicant that he has obtained [~~made, or will make, a reasonable effort to contact and obtain~~] written permission from all members of the same class of the next-of-kin or an order from a court of competent jurisdiction for the removal of the remains; and
(h) A statement by the applicant that he is familiar with and will abide by all applicable laws, regulations, and policies relating to the establishment and abandonment of cemeteries and the custody, handling, and disposal of human remains.

Section 3. [~~4.~~] Reburial. (1) All disinterred human remains intended for reburial, and all other contents of the grave, shall be enclosed in a container constructed of strong material and of sufficient size to hold the remains without altering their shape or size. In the event the human remains are not thoroughly decomposed the container shall be sealed to prevent the escape of liquids or gas.

(2) The depth of burial requirements of Section 1 [~~2~~] of this administrative regulation shall apply to all reburials except that human remains which are thoroughly decomposed need be reburied only to such a depth so that no part of the container is less than two (2) feet below the natural surface of the ground.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 14, 1993
FILED WITH LRC: August 12, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 21, 1993, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by September 16, 1993 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Barbara F. White
(1) Type and number of entities affected: None
(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: 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:

(6) Any additional information or comments: No revenue generated.

TIERING: Is tiering applied? No. Tiering does not apply because this administrative regulation does not create disproportional impact on a part, class, or division of the regulated entity.

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

(2) State what unit, part or division of local government this administrative regulation will affect. 901 KAR 5:090 contains sections relative to functions of the local health department.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation establishes requirements for the issuance of burial-transit and disinterment-reinterment permits by the local registrar in the county health department.

(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: 901 KAR 5:090, Section 1 is deleted due to conflicts with KRS 213.076 and 213.081. Changes made in 901 KAR 5:090 will not affect current process.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 50:002. Milk for Manufacturing Advisory Committee.

RELATES TO: KRS 217C.010 to 217C.990

STATUTORY AUTHORITY: KRS 211.090

NECESSITY AND FUNCTION: The Secretary for Human Resources is directed by KRS 217C.070 to appoint a Milk for Manufacturing Advisory Committee. This administrative regulation establishes procedures for the selection of nominees for appointment to the Milk for Manufacturing Advisory Committee in accordance with KRS 217C.070.

Section 1. Procedure for the Selection of Nominees to the Milk for Manufacturing Advisory Committee. The procedure for the selection of nominees for appointment by the Secretary for Human Resources to the Milk for Manufacturing Advisory Committee shall be as follows:

(1) The secretary shall appoint four (4) processors or representatives thereof. Any [~~The Dairy Products Association of Kentucky or any other~~] organization representing manufacturing milk processors in Kentucky may nominate two (2) candidates for each of the four (4) positions. In addition, any individual manufacturing milk processor may submit his own name for consideration for appointment.

(2) The secretary shall appoint two (2) producers or representatives thereof. Any [~~The producer organizations listed below or any other~~] organization representing manufacturing milk producers in Kentucky may nominate two (2) candidates for each position. [~~:~~

~~(a) National Farmers Organization;~~

~~(b) Kentucky Farm Bureau Federation;~~

~~(c) American Dairy Association of Kentucky; and~~

~~(d) D. I. Manufacturing.~~]

In addition, any individual manufacturing milk producer may submit his own name for consideration for appointment.

(3) The secretary shall appoint two (2) citizens at large to represent consumers. Any organization which represents consumers in Kentucky may submit two (2) names for each position for consideration for appointment. [~~Such~~] Nominees shall not be directly connected with the producing, processing, or distribution of dairy products.

Section 2. Purpose and Operating Procedure. The purpose of the Milk for Manufacturing Committee and its operating procedures are as follows:

(1) Committee advises the department on matters pertaining to the Milk for Manufacturing Industry.

(2) Committee provides the department with technical review and comment on proposed new department administrative regulations or amendments to existing administrative regulations which may be promulgated and which regulate the Milk for Manufacturing Industry.

(3) Committee also provides the department with other advice and direction it feels necessary.

(4) Members elect the chairperson and vice chairperson of the committee. The terms of the chairperson and vice chairperson are two (2) years unless their terms on the committee expire and they are not reappointed, or resignation occurs, or unless an additional election is called for by a majority vote of the committee members. The chairperson and vice chairperson may be eligible for reelection.

(5) Committee meets at least semiannually and on other occasions as may be necessary, on call of the chairperson or request of the Secretary, Cabinet for Human Resources. The meeting place and time are announced a minimum of five (5) days prior to the meeting. A total of five (5) of the nine (9) appointed members constitute a quorum.

(6) Any member may call a special meeting with the written endorsement of at least four (4) other committee members.

(7) The chairperson shall preside at all committee meetings and appoint subcommittees.

(8) Vice chairperson shall preside over committee meetings in the absence of the chairperson and serve as chairperson if the position is vacated until a new chairperson is elected by the members.

(9) If the chairperson and vice chairperson are absent from a regular or special meeting of the committee, the committee chooses a committee member as chairperson of that meeting.

RICE C. LEACH, M.D., Commissioner

FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: July 13, 1993

FILED WITH LRC: August 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 21, 1993, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by September 16, 1993 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: David Klee

(1) Type and number of entities affected: None

(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 additional

(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:

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

(6) Any additional information or comments: No revenue generated.

TIERING: Is tiering applied? No. Tiering does not apply because this administrative regulation does not create disproportional impact on a part, class, or division of the regulated entity.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 50:005. Grade A Milk Advisory Committee.

RELATES TO: KRS 217C.010 to 217C.990

STATUTORY AUTHORITY: KRS 211.090

NECESSITY AND FUNCTION: The Secretary for Human Resources is directed by KRS 217C.070 to appoint a Grade A Milk Advisory Committee. This administrative regulation establishes procedures for the selection of nominees for appointment to the Grade A Milk Advisory Committee in accordance with KRS 217C.070.

Section 1. Procedure for the Selection of Nominees to the Grade A Milk Advisory Committee. The procedure for the selection of nominees for appointment by the Secretary for Human Resources to the Grade A Milk Advisory Committee shall be as follows:

(1) The secretary shall appoint three (3) processors or representatives thereof. Any [~~The Dairy Products Association of Kentucky or any other~~] organization representing Grade A processors in Kentucky may nominate two (2) candidates for each of the three (3) positions. In addition, any individual Grade A processor may submit his own name for consideration for appointment.

(2) The secretary shall appoint three (3) producers or representatives thereof. Any [~~The producer organizations listed below or any other~~] organization representing Grade A milk producers in Kentucky may nominate two (2) candidates for each position. [~~:~~

~~(a) Dairymen, Incorporated;~~

~~(b) National Farmers Organization;~~

~~(c) Kentucky Farm Bureau Federation;~~

~~(d) Huntington Interstate Milk Sales Association;~~

~~(e) Southeastern Graded Milk Producers Association;~~

~~(f) Cincinnati Coop. Milk Sales Association;~~

~~(g) Dairy Products Association of Kentucky; and~~

~~(h) American Dairy Association of Kentucky.~~]

In addition, any individual Grade A milk producer may submit his own name for consideration for appointment.

(3) The secretary shall appoint two (2) citizens at large to represent consumers. Any organization which represents consumers in Kentucky may submit two (2) names for each position for consideration for appointment. [~~Such~~] Nominees shall not be directly connected with the producing, processing, or distribution of dairy products.

Section 2. Purpose and Operating Procedure. The purpose of the Grade A Milk Committee and its operating procedures are as follows:

(1) Committee advises the department on matters pertaining to the Grade A Milk Industry.

(2) Committee provides the department with technical review and comment on proposed new department administrative regulations or amendments to existing administrative regulations which may be promulgated and which regulate the Grade A Milk Industry.

(3) Committee also provides the department with other advice and direction it feels necessary.

(4) Members elect the chairperson and vice chairperson of the committee. The terms of the chairperson and vice chairperson are two (2) years unless their terms on the committee expire and they are not reappointed, or resignation occurs, or unless an additional election is called for by a majority vote of the committee members. The chairperson and vice chairperson may be eligible for reelection.

(5) Committee meets at least semiannually and on other occasions as may be necessary, on call of the chairperson or request of the Secretary, Cabinet for Human Resources. The meeting place and time are announced a minimum of five (5) days prior to the meeting. A total of five (5) of the nine (9) appointed members constitute a quorum.

(6) Any member may call a special meeting with the written endorsement of at least four (4) other committee members.

(7) The chairperson shall preside at all committee meetings and appoint subcommittees.

(8) Vice chairperson shall preside over committee meetings in the absence of the chairperson and serve as chairperson if the position is vacated until a new chairperson is elected by the members.

(9) If the chairperson and vice chairperson are absent from a regular or special meeting of the committee, the committee chooses a committee member as chairperson of that meeting.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: June 24, 1993

FILED WITH LRC: August 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 21, 1993, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by September 16, 1993 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: David Klee

(1) Type and number of entities affected: None

(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: 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:

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

(6) Any additional information or comments: No revenue generated.

TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity. Regulation only creates an advisory committee to the Milk Control Branch.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:015. Schedule I substances.

RELATES TO: KRS [~~Chapter~~] 218A.010 to 218A.050, 21 CFR 1308.11

STATUTORY AUTHORITY: KRS 194.050, 218A.020, 218A.040, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020 authorizes the Cabinet for Human Resources to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.040 and applicable federal regulations, the Cabinet for Human Resources designates the substances set forth in this regulation as Schedule I controlled substances.

Section 1. Opiates. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, optical isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphacetylmethadol (except Levo-alphacetylmethadol (LAAM));

(2) Acetyl-alpha-methylfentanyl, N-[1-(1-methyl-2-phenethyl)-4-piperidinyl [~~phenyl) ethyl 4-piperidyl~~]]-N- phenylacetamide;

(3) [~~(2)~~] Alpha-methylfentanyl, N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(4) [~~(3)~~] Alpha-methylthiofentanyl, N-[1-[~~(1-~~]methyl-2-(2-thienyl) ethyl-4-piperidinyl] [~~piperidyl~~]-N- phenylpropanamide;

(5) [~~(4)~~] Benzylfentanyl, N-[1-benzyl-4-piperidyl]-N-phenylpro-panamide;

(6) [~~(5)~~] Beta-hydroxyfentanyl, N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenypropanamide [~~phenyl)ethyl 4 piperidyl] N-phenylpropanamide~~];

(7) [~~(6)~~] Beta-hydroxy-3-methylfentanyl, N-[1-(2-hydroxy-2phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide [~~N-[3 methyl 1-(2 hydroxy 2 phenyl) ethyl 4 piperidyl] N phenylpropanamide~~];

(8) [~~(7)~~] Difenoxin;

(9) [~~(8)~~] 3-Methylfentanyl, N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;

(10) [~~(9)~~] 3-methylthiofentanyl, N-[3-methyl-1-(2[~~-2~~]-thienyl) ethyl-4-piperidinyl [~~piperidyl~~]]-N-phenylpropanamide;

(11) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);

(12) [~~(10)~~] Para-fluorofentanyl, (N-(4-fluorphenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;

(13) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);

(14) [~~(11)~~] Thenylfentanyl, N-[1-(2-thienyl) methyl-4-piperidyl]N-phenylpropanamide;

(15) [~~(12)~~] Thiofentanyl, N-phenyl-N-[1-[~~(2)~~-(2-thienyl)ethyl-4-piperidinyl]-propanamide [~~piperidyl] N phenylpropanamide~~]; and

(16) [~~(13)~~] Tilidine.

Section 2. Opium Derivatives. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, optical isomers, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:

(1) Drotebanol; and

(2) Etorphine (except hydrochloride salt). [~~1 methyl 4 phenyl 4 propionoxypiperidine (MPPP);~~

~~(3) 1 (2 phenylethyl) 4 phenyl 4 acetyloxyperidine (PEPAP).~~]

Section 3. Hallucinogenic Substances. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomer" includes the optical position and geometric isomers):

(1) alpha-ethyltryptamine (alpha-ethyl-1H-indole-3-ethanamine,3-(2-aminobutyl)indole);

(2) 4-bromo-2, 5-dimethoxy-amphetamine (4-bromo-2,5-DMA,4-bromo-2,5-dimethoxy-alpha-methylphenethylamine);

(3) [~~(2)~~] 2, 5-dimethoxyamphetamine (2, 5 DMA);

(4) 2,5-dimethoxy-4-ethylamphetamine (DOET);

(5) [~~(3)~~] Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine, cyclohexamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, PCE);

(6) 3,4-methylenedioxymethamphetamine (MDMA);

(7) [~~(4)~~] 4-methoxyamphetamine (PMA, 4-methoxy-alpha-methyl-phenethylamine, paramethoxyamphetamine);

(8) [~~(5)~~] 3,4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(9) [~~(6)~~] N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3,4-(methylenedioxy) Phenethylamine, N-hydroxy MDA);

(10) [~~(7)~~] Parahexyl (Synhexyl, 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran);

(11) [~~(8)~~] Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP); [~~and~~]

(12) [~~(9)~~] Thiophene analog of phencyclidine (1-(1-(2-thienyl) cyclohexyl) piperidine, TCP, TPCP); and

(13) 1-[1- (2-thienyl) cyclohexyl]pyrrolidine (TCPy).

Section 4. Depressants. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone; and

(2) Methaqualone [~~(2-methyl-3-o-tolyl-4(3H)-quinazolinone)~~].

Section 5. Stimulants. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (aminoxaphen, 2-amino-5-phenyl-2-oxazoline, 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(3) (±) cis-4-methylaminorex ((±) cis-4,5-dihydro-4methyl-5-phenyl-2-oxazolamine);

(4) N,N-dimethylamphetamine (N,N-alpha-trimethyl-ben-

zeneethanamine, [~~(N,N,alpha-trimethylbenzene-ethaneamine.~~] N,N,alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers;

(5) N-ethylamphetamine;

(6) [~~(2)~~] Fenethylline; and

(7) Methcathinone (2-(methylamino) -propiophenone, alpha (methylamino) -propiophenone, alpha (methylamino) -propiophenone, 2-(methylamino) -1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methycathinone, AL-464, AL-422, AL-463 and UR1431) its salts, optical isomers and salts of optical isomers.

[~~(3) N-ethylamphentamine;~~

~~(4) 4-methylaminorex (2-amino-4-methyl-5-phenyl-2-oxazoline);~~ and

~~(5) 3,4-methylenedioxymethamphetamine (MDMA).~~]

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 28, 1993
FILED WITH LRC: July 16, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 21, 1993, at 9 a.m., in the Vital Statistics Conference Room located on the first floor of the CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 16, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Crews

(1) Type and number of entities affected: This regulation potentially affects all citizens of the Commonwealth.

(a) Direct and indirect costs or savings to those affected: There is no cost or savings involved. The regulation updates the list of controlled substances in Schedule I.

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

(b) Reporting and paperwork requirements: There is no reporting or paperwork.

(2) Effects on the promulgated administrative body: There is no significant effect on the administrative body. The regulation merely updates the list of controlled substances in Schedule I.

(a) Direct and indirect costs or savings: There is no additional cost or saving generated by this regulation.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is an out-of-date list. This was rejected since the state list would not conform to the federal list.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because KRS Chapter 218A applies to all persons without regard to sex, race, age, profession, or other differentiation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; 21 USC 801 and 21 CFR 1308.11.

2. State compliance standards. The criteria for substances in Schedule I are set forth in KRS 218A.040.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in Schedule I are set forth in 21 USC 812.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:035. Schedule V substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.120 to 218A.130, 21 CFR 1308.15 [~~Chapter 218A~~]

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.120, 218A.250

NECESSITY AND FUNCTION: KRS 218A.120 authorizes the Cabinet for Human Resources to place a substance in Schedule V under the Kentucky Controlled Substances Act if it finds that: (1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV; (2) the substance has currently accepted medical use in treatment in the United States; and (3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV. In addition, KRS 218A.020(3) provides if any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Human Resources, the Cabinet for Human Resources may similarly control the substance by administrative regulation.

Section 1. Schedule V Controlled Substances. The Cabinet for Human Resources hereby designates as "Schedule V" controlled substances, in addition to those specified by KRS 218A.130, the following:

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(b) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(c) Not more than two and five-tenths (2.5) milligrams of diphenoxylate hydrochloride and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit; [~~and~~]

(d) [~~(b)~~] Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(e) Not more than five-tenths (0.5) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

(2) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts: Buprenorphine.

(3) Stimulants. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

Section 2. Dispensing Without Prescription. A controlled substance listed in Schedule V which is not a prescription drug under the Federal Food, Drug, and Cosmetic Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, if [~~provided that~~]:

(1) The medicinal preparation contains [~~shall contain~~] in addition to the controlled substances, some drug or drugs conferring upon it medicinal qualities other than those possessed by the controlled substances alone;

(2) Not more than 240cc (eight (8) ounces) nor more than forty-eight (48) dosage units of any such controlled substance containing opium, is [~~may be~~] dispensed at retail to the same purchaser in any given forty-eight (48) hour period;

(3) The labeling and packaging is [~~shall be~~] in accordance with the requirements of the federal and state Food, Drug, and Cosmetic Act and the United States Pharmacopoeia;

(4) The preparation is [~~shall be~~] dispensed or sold in good faith as a medicine, and not for the purpose of evading the provisions of KRS Chapter 218A;

(5) The preparation is [~~shall~~] not [~~be~~] displayed in areas open to the public;

(6) The dispensing is made only by a pharmacist, and not by a nonpharmacist employee even if under the supervision of a pharmacist, although after the pharmacist has fulfilled his professional and legal responsibilities set forth in this section, the actual cash, credit transaction, or delivery, may be completed by a nonpharmacist;

(7) The purchaser is at least eighteen (18) years of age;

(8) The pharmacist requires every purchaser of a controlled substance under this section, not known to him to furnish suitable identification, including proof of age where appropriate; and

(9) The dispensing of exempt controlled substances under this regulation is recorded in a bound book, maintained by the pharmacist, which shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or initials of the pharmacist who dispensed the substance to the purchaser. The book shall be maintained in accordance with the recordkeeping requirements of KRS 218A.200.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 27, 1993
FILED WITH LRC: August 12, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 21, 1993, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by September 16, 1993 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews
(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.
(a) Direct and indirect costs or savings to those affected:
1. First year: There are no direct or indirect costs or savings to pharmacists because this administrative regulation updates the controlled substances listed in Schedule V.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Is tiering applied? No. Tiering was not applied because the exemption applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; 21 USC 801, 21 CFR 1306.32 and 21 CFR 1308.14.
2. State compliance standards. The criteria for substances in Schedule V are set forth in KRS 218A.120.
3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in Schedule V are set forth in 21 USC 812 and for sales of codeine preparations without a prescription in 21 CFR 1306.32.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:080. Contingency plan.

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS [~~13A.120,~~] 194.050, 7 CFR 271.7, 273.2, 273.15
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program [~~as~~

~~prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR 270 through 280~~]. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the process used by the cabinet in the administration of the contingency plan in the event a reduction, suspension, or cancellation of food stamp benefits is ordered by the Department of Agriculture, Food and Nutrition Service (FNS). This administrative regulation has been amended to comply with the amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee.

Section 1. Allotment Reduction. If a reduction, suspension, or cancellation of benefits is ordered by the FNS [~~Food and Nutrition Service (FNS)~~], the following procedures shall [~~will~~] be applicable:

(1) If the action is a benefit reduction:

(a) [~~,~~] The Thrifty Food Plan amounts for all household sizes shall be reduced by a percentage specified by FNS; and

(b) [~~,~~] FNS will specify whether minimum benefits are to be provided.

(2) If the action in effect is a suspension or cancellation:

(a) An [~~,~~] eligible household[~~s~~] shall have its [~~their~~] allotment level[~~s~~] calculated as usual; [~~,~~] however,

(b) No allotment[~~s~~] shall be issued for the month[~~(s)~~] the suspension or cancellation is in effect.

Section 2. Application and Certification Process. Applications shall continue to be accepted and processed in accordance with 904 KAR 3:030 [~~7 CFR 273~~], except as provided below.

(1) Benefits shall be reduced, suspended or cancelled as FNS orders for the affected month[~~(s)~~].

(2) During a cancellation, a household[~~s~~] eligible for expedited services shall be processed in accordance with time frames set forth in 904 KAR 3:030, Section 6 [~~7 CFR 273.2(i)~~].

Section 3. Restoration of Benefits. (1) Allotments or portions of allotments representing restored or retroactive benefits for a prior unaffected month shall not be reduced, suspended or cancelled, even though they are issued during an affected month.

(2) A household[~~s~~] whose allotment[~~s~~] is [~~are~~] reduced or cancelled:

(a) Shall not be entitled to the restoration of lost benefits at a future date; [~~,~~] however,

(b) Restoration of benefits to an affected household[~~s~~] shall be provided if FNS determines that a surplus of funds exists as a result of the reduction or cancellation.

Section 4. Fair Hearings. Subject to the following conditions, a [~~In accordance with 7 CFR 271.7(f), any~~] household which has its allotment reduced, suspended, or cancelled as a result of an order issued by FNS may request a fair hearing, in accordance with 904 KAR 3:070, if it disagrees with the action [~~subject to the following conditions~~]:

(1) Fair hearings shall be held only when the request for a fair hearing is based on:

(a) A household's belief that its benefit level was computed incorrectly under this administrative regulation; or

(b) That this administrative regulation was misapplied or misinterpreted.

(2) A household[~~s~~] who is [~~are~~] merely disputing the fact that a reduction, suspension or cancellation was ordered shall be denied a fair hearing.

(3) A household[~~s~~] shall not have the right to a continuation of benefits pending a fair hearing. [~~; however,~~]

(4) Retroactive benefits may be granted if it is determined that the household's benefits were reduced by more than the percentage ordered by FNS.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 8, 1993
FILED WITH LRC: August 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the Vital Statistics Conference Room, 1st Floor, CHR Building. Individuals interested in being heard at this hearing shall notify this committee in writing by September 16, 1993 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 on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Masten Childers II, Commissioner, Department of Law, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Truett DeMoisey

(1) Type and number of entities affected: None. The administrative regulation is being revised to comply with drafting requirements of KRS Chapter 13A. There are no substantive changes to this administrative regulation. Therefore, no entities will be affected as a result of the amendments to this administrative regulation.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 271.7

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated in accordance with the Food Stamp Act of 1977, as

amended, and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the FNS.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:044. Mental health center services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.130, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to services provided by Mental Health Centers for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program to both the categorically needy and the medically needy.

Section 1. Definition of Psychiatric Nurse. (1) For the purpose of providing Medicaid [~~Medical Assistance~~] Program reimbursable services, registered nurses employed by participating mental health centers shall be considered psychiatric or mental health nurses when they meet any of the following criteria:

(a) Master of Science in Nursing (MSN) with specialty in psychiatric/mental health nursing; additional experience is not required; or

(b) Graduate of a four (4) year nursing educational program, with a Bachelor of Science in Nursing (BSN) and with a minimum of one (1) year of experience in a mental health setting; or

(c) Graduate of a three (3) year nursing educational program (diploma graduate), and with a minimum of two (2) years of experience in a mental health setting; or

(d) Graduate of a two (2) year nursing educational program, with an Associate Degree in Nursing (ADN) and with a minimum of three (3) years of experience in a mental health setting; or

(e) Effective July 1, 1989, any level of education with American Nursing Association (ANA) certification as a psychiatric and mental health nurse.

(2) Notwithstanding the preceding, any registered nurse employed by a participating mental health center in Kentucky on June 30, 1981 shall be considered a psychiatric nurse if [~~so long as~~] their employment with the center continues, for the purpose of providing Medicaid [~~Medical Assistance~~] Program reimbursable services.

Section 2. Community Mental Health Manual. The Community Mental Health Manual specifies the conditions for participation, services covered, and limitations for the mental health center services component of the Medicaid Program. The Community Mental Health Manual dated July 1, 1993 is incorporated by reference in this administrative regulation and may be reviewed during regular working hours (8 a.m. to 4:30 p.m. Eastern Standard Time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. Covered Services. The following services provided by participating mental health centers shall be considered covered when rendered within Kentucky Medicaid [~~Medical Assistance~~] Program guidelines as shown in the Community Mental Health Manual:

(1) Inpatient services; [~~, as defined in 902 KAR 20:091, when a center based psychiatrist renders the service, or when the psychiatrist deems it appropriate for the psychologist (including psychological associates), psychiatric nurse, master degree social worker, or individuals with equivalent professional education (as determined by the cabinet) to provide therapy for the patient.~~]

(2) Outpatient services; [~~, as defined in 902 KAR 20:091, but not including the noncovered services listed in this section and Section 3 of this regulation, if rendered by a mental health professional from one (1) of the four (4) principal disciplines (psychiatrist, psychologist (including psychological associate), psychiatric nurse, or master degree social worker), or individuals with equivalent professional education (as determined by the cabinet). Services rendered by a staff member other than one of the above shall be covered only if the service is delivered in accordance with a plan of treatment approved by the psychiatrist when delivered under the supervision of a mental health professional from one (1) of the four (4) principal disciplines or an individual with equivalent professional education (as determined by the cabinet). Outpatient services include both on site and off site services.~~]

(3) Therapeutic rehabilitation services; [~~(partial hospitalization), as defined in 902 KAR 20:091, if:~~

~~(a) The psychiatrist is present in the therapeutic rehabilitation unit on a regularly scheduled basis (at least monthly) and assumes clinical responsibility for all patients; and~~

~~(b) The program has direct supervision by a psychiatrist, psychologist (psychological associate), psychiatric nurse, master degree social worker, or individuals with equivalent professional education (as determined by the cabinet).~~

~~(4) Detoxification services, when rendered by a center based psychiatrist in a detoxification unit.~~

~~(5) Psychological testing, if the tests are administered and evaluated by a licensed psychologist, certified psychologist, or psychological associate.~~]

(4) [~~(6)~~] Emergency services; and [~~, as defined in 902 KAR 20:091, if the eligible recipient is seen in an emergency situation by any professional or paraprofessional member of the mental health staff.~~]

(5) [~~(7)~~] Personal care home services. [~~, if rendered by a mental health professional from one (1) of the four (4) principal disciplines (psychiatrist, psychologist, psychiatric nurse, or master degree social worker) or individuals with equivalent professional education (as determined by the cabinet) to eligible recipients in personal care homes, and including resocialization and remotivation services rendered to personal care home groups, if group services are rendered.~~

~~(8) Diagnosis deferred, diagnostic category, limited to the initial three (3) visits.~~

~~(9) Speech disturbance, diagnostic category, only if provided by a psychiatrist or psychologist.~~

~~Section 3. Noncovered Services. The following mental health center services shall not be covered:~~

~~(1) Services of an educational or supervisory nature;~~

~~(2) Speech therapy;~~

~~(3) Alcohol and drug services;~~

~~(4) Consultation (except consultation among direct staff of the center);~~

~~(5) Collateral therapy for age twenty one (21) and over (except that immediate family members may participate in joint therapy sessions when the client is present and the client's plan of care as~~

~~approved by the psychiatrist requires that treatment modality);~~
~~(6) Residential treatment for alcoholism;~~
~~(7) Services rendered to residents or patients of nursing facilities; and~~
~~(8) Field trips, recreational and social activities.~~]

Section 4. The provisions of this administrative regulation shall be applicable for services provided on or after July 1, 1993 [~~1991~~].

Section 5. 907 KAR 1:370, Incorporated by reference of the Community Mental Health Services Manual, is repealed.

JANIE A. MILLER, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 16, 1993
FILED WITH LRC: July 23, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by September 16, 1993 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 on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Kim Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Janie A. Miller
(1) Type and number of entities affected: All mental health centers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the distribution of public funds requires that all applicants meet the same eligibility requirements to ensure equal distribution. Disparate treatment of any entity making application under this administrative regulation 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 impacted as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:045. Payments for mental health center services.

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

Section 1. Mental Health Centers. Participating in-state mental health center providers shall be reimbursed as follows:
(1)(a) Payment rates for the rate year beginning July 1, 1991 shall be based on the following principles:
1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based on the latest available cost and statistical data from the mental health centers.
2. Costs used in setting the interim rates shall be trended to the beginning of the rate year and indexed for inflation to the end of the rate year.
3. Direct service costs shall be arrayed (the "interim" array) and the interim rate upper limit set at 130 percent of the median cost per unit of service of all participating centers.
4. The base rate shall be the allowable, reasonable cost for each service unit or the upper limit, whichever is less.
5. A retrospective final settlement shall be made after the end of the rate year based on the fiscal year ending June 30, 1992 annual cost report. All costs shall be rearrayed (the final array) for the final settlement. For purposes of determining costs in excess of the upper limit, the upper limit shall be the higher of the maximum derived from the interim array or the final array.
6. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit based on the final array.
7. A funding adjustment of fifty-two (52) cents shall be added to the interim outpatient per unit rates, and the same funding adjustment (i.e., the same fifty-two (52) cents) shall be allowed as a part of the final outpatient per unit rates (without regard to upper limits) to improve compensation of service providers and encourage provision of additional services.
(b) Payment rates for the rate year beginning July 1, 1992 shall be based on the following principles:
1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based on mental health center cost reports submitted for the six (6) month period ending December 31, 1991.
2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation to the end of the rate year.
3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.
4. The base rate shall be the allowable reasonable cost for each

service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the number of outpatient units of service) shall be added to the interim rate (without regard to upper limits) to improve compensation of service providers and encourage provision of additional services.

7. The interim rate shall be adjusted to final prospectively determined rates based on the audited or desk reviewed annual cost reports for the period ending June 30, 1992 with the cost reports indexed for inflation, the upper limits previously determined remaining in effect, and the same funding adjustment allowed.

(c) Payment rates for rate years beginning [~~on or after~~] July 1, 1993 and July 1, 1994 shall be based on the following principles:

1. Final prospectively determined rates for the [~~nine (9)~~] direct service cost centers shall be set based on each mental health center's fiscal year ending June 30, 1992 audited annual cost report [~~for the prior year~~]; if the [~~an audited~~] cost report is not audited at the time of rate setting [~~available, the most recent unaudited annual cost report shall be the basis for~~] the rate shall be [~~with the rate~~] adjusted upon completion [~~as necessary at the time~~] of the audit [~~or desk review of the cost center used in setting the rate~~]. Costs shall be actual, reasonable, and allowable costs.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the total number of outpatient units of service) shall be added to the rate (without regard to upper limits) to improve compensation of providers and encourage provision of additional services.

(d) Payment rates for rate years beginning on or after July 1, 1995 shall be based on the following principles:

1. Final prospectively determined rates for the direct service cost centers shall be set based on each mental health center's audited annual cost report for the prior year; if the cost report is not audited at the time of rate setting, the rate shall be adjusted upon completion of the audit or desk review. Costs shall be actual, reasonable, and allowable costs.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the total number of outpatient units of service) shall be added to the rate (without regard to upper limits) to improve compensation of providers and encourage provision of additional services.

(2) Payment amounts shall be determined by application of the "Cabinet for Human Resources Community Mental Health - [/] Mental Retardation [~~Center~~] Reimbursement Manual," dated July 1, 1993 [~~(revised May 1, 1992)~~], which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Cabinet for Human Resources Community Mental Health - [/] Mental Retardation [~~Center~~] Reimbursement Manual may be reviewed during regular working hours of [{] 8 a.m. to 4:30 p.m. Eastern time [}] in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed $20,000 [~~15,000~~] total valuation annually (unless the excess cost is considered as compensation to the management personnel), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.

[~~(4) The reimbursable departmental cost centers are on site psychiatrist, on site individual, off site psychiatrist, off site individual, group, personal care, therapeutic rehabilitation, inpatient hospital psychiatrist, and inpatient hospital other.~~]

Section 2. Implementation of Payment System. (1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.

(2) Overpayments discovered as a result of audits shall be settled in the usual manner, i.e., through recoupment or withholding.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than ninety (90) [~~sixty (60)~~] days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet. [~~Notwithstanding this general requirement, the provider need not make available (for purposes of determining Medicaid payment amounts) staff notes or treatment records which show treatment details for non-Medicaid covered services; for these services, the information required shall be limited to a case summary sheet or listing which shows, at a minimum, the type of service provided, the staff member who provided the service, the date of the service, and appropriate identifying information relating to the patient.~~]

(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this administrative regulation for services not covered by 907 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the [~~cabinet's~~] "Cabinet for Human Resources Community Mental Health - [/] Mental Retardation [~~Center~~] Reimbursement Manual."

Section 4. Reimbursement of Out-of-state Providers. Reimbursement to participating out-of-state mental health center providers shall be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

JANIE A. MILLER, Acting Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: July 16, 1993
FILED WITH LRC: July 23, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by September 16, 1993 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 on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Kim Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Janie A. Miller
(1) Type and number of entities affected: All mental health centers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1 First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the distribution of public funds requires that all applicants meet the same eligibility requirements to ensure equal distribution. Disparate treatment of any entity making application under this administrative regulation 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 impacted as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 2:060. Mental health and mental retardation [~~MH/MR~~] manuals for plan and budget instructions, billing instructions, and reimbursement guidelines.

RELATES TO: KRS 210.370 to 210.460
STATUTORY AUTHORITY: KRS 210.440 to 210.450
NECESSITY AND FUNCTION: The Cabinet for Human Resources is [~~empowered and~~] directed by KRS 210.370 to 210.460 to allocate available funds to mental health/mental retardation boards in accordance with approved plans and budgets. KRS 210.440 and 210.450 authorize the Secretary for Human Resources to promulgate policies and regulations as to the operations, budgets and expenditures of community programs and to require reporting management and financial programs as necessary to carry out the purposes of KRS 210.370 to 210.460.

Section 1. Annual Plan and Budget Instructions. The Cabinet for Human Resources incorporates [~~hereby adopts~~] the "Annual Plan and Budget Instructions, July 1, 1984" by reference. community mental health and [/] mental retardation boards shall [~~will~~] follow these instructions when preparing and submitting the annual plan and budgets to the cabinet. The manual includes [~~, but is not limited to,~~] the following: rate and allocation sheets, client service definitions and descriptions, fiscal plan, waiver request, letter of assurance, addenda, and regional data packet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane [~~275 East Main Street~~], Frankfort, Kentucky 40601 [~~40621~~].

Section 2. DMH/MRS, Program, Policies and Billing Instructions Manual. The Cabinet for Human Resources incorporates [~~hereby adopts~~] the July 1, 1985 edition of the "DMH/MRS Program Policies and Billing Instructions Manual," [~~as administrative regulation~~] by reference. The manual relates to [~~, but is not limited to~~] the following: billing and reimbursement instructions for mental health, mental retardation, and substance abuse client priorities, program service definitions, reporting requirements, monitoring procedures, and contract amendment procedures. The instructions contained shall be followed by those community mental health and [/] mental retardation boards contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane, [~~275 East Main Street,~~] Frankfort, Kentucky 40601 [~~40621~~].

Section 3. Cabinet for Human Resources [~~Title XIX and DHS Funding~~] Community Mental Health and [/] Mental Retardation Reimbursement Manual, July 1, 1993 [~~1984~~]. The Cabinet for Human Resources incorporates [~~hereby adopts~~] this manual [~~as administrative regulation~~] by reference. This manual relates to[~~, but is not limited to~~] the following: scope of services, requirements and limitations of participation, method and principles of reimbursement. The manual shall be adhered to by those community mental health and [/] mental retardation boards contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane, [~~275 East Main Street,~~] Frankfort, Kentucky 40601 [~~40621~~].

[~~Section 4. Summary of Amendments. (1) In relation to Section 1 of this regulation pertaining to annual plan and budget instructions, the term "centers" is changed to "boards" and the term "health" is~~

~~changed to "mental health and mental retardation."~~

~~(2) In relation to Section 2 of this regulation pertaining to the DHS "Program Policies and Billing Instructions Manual," the manual is stricken in its entirety and a new manual entitled July 1, 1985 Edition of the "DMH/MRS Program Policies and Billing Instruction Manual" is substituted in lieu thereof. Provision is made in the new manual for the driving under the influence (DUI) program policies, procedures and billing instructions. Also included within the new edition are changes pertaining to definitions of services, references to Title XX have been deleted, priorities section changed, and prevention program standards and guidelines added.~~

~~(3) In relation to Section 3 of this regulation pertaining to "Cabinet for Human Resources Title XIX and DHS Funding Community Mental Health/Mental Retardation Reimbursement Manual, July 1984" the term "centers" is changed to "boards" and the term "health" is changed to "mental health and mental retardation."~~]

DENNIS D. BOYD, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 22, 1993
FILED WITH LRC: July 23, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for September 21, 1993, 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 September 16, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: All mental health centers participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First Year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or governmental 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. Tiering was not appropriate in this administrative regulation because the distribution of public funds requires that all applicants meet the same eligibility requirements to ensure equal distribution. Disparate treatment of any entity making application under this administrative regulation 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 impacted as well as Sections 2 and 3 of the Kentucky Constitution.

PROPOSED REGULATIONS RECEIVED BY NOON, AUGUST 15, 1993

KENTUCKY LEGISLATIVE ETHICS COMMISSION

2 KAR 2:010. Legislative agent or employer registration statement.

RELATES TO: KRS 6.666(6) to (13), 6.807
STATUTORY AUTHORITY: KRS 6.666(5)
NECESSITY AND FUNCTION: KRS 6.807 requires each legislative agent and employer to file an initial registration. This administrative regulation establishes the registration statement.

Section 1. The registration form required by KRS 6.807 shall be mailed to the Kentucky Legislative Ethics Commission, Room 318, Capitol Annex, Frankfort, Kentucky 40601.

Section 2. (1) The "Initial Legislative Agent/Employer Registration Statement (KLEC 7/93)" is incorporated by reference.
(2) This document may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, Capitol Annex, Room 318, Frankfort, KY 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE GEORGE E. BARKER, Chair
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 12, 1993 at 3 p.m.
PUBLIC HEARING: A public hearing will be held at the Legislative Ethics Commission Office in Room 318, Capitol Annex, Frankfort, Kentucky 40601, 10 a.m on Friday, September 24, 1993. Individuals interested in attending this hearing shall notify this agency in writing by September 19, 1993, 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 canceled. 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 and prior arrangements for a transcript are 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: Michael O'Connor, Attorney, Legislative Ethics Commission, Room 318, Capitol Annex, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Michael O'Connor
(1) Type and number of entities affected: The initial registration statement will affect all legislative agents and their employers. The number of legislative agents is anticipated to be as large as 600, and the number of employers is anticipated to be as large as 400. The exact numbers cannot be determined in advance.
(a) Direct and indirect costs or savings to those affected:
1. First year: KRS 6.809 requires that each employer of one or more legislative agents shall pay a fee of $250 for registration which shall be valid through the next 31st day of December of an odd-numbered year, unless previously terminated. This regulation adds no additional costs.
2. Continuing costs or savings: KRS 6.807 requires that an employer will pay the $250 fee each time the employer re-registers after expiration on the 31st day of December of an odd-numbered year, or re-registers after voluntarily terminating registration before it expires. This regulation adds no additional costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no known additional factors which will increase or decrease costs.
(b) Reporting and paperwork requirements: KRS 6.807 requires that each legislative agent and employer shall file an initial registration statement with the Legislative Ethics Commission within seven days following engagement. This regulation creates the required form.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Costs to the Legislative Ethics Commission will be approximately one cent per page for printing costs. The original printing of 1,000 pages will cost $10. The costs will be paid from money already budgeted from general and restricted funds, and fees collected.
2. Continued costs or savings: The costs should be consistent on an annual basis.
3. Additional factors increasing or decreasing costs: None known.
(b) Reporting and paperwork requirements: KRS Chapter 6 requires the Commission shall make the completed forms available for public inspection, and shall maintain an alphabetical index. Completed forms shall be preserved for two years. The Commission shall provide the Legislative Research Commission and every member of the General Assembly with a list of every registered legislative agent and employer on or before the tenth day of every month. This regulation adds no additional requirements.
(3) Assessment of anticipated effect on state and local revenues: This regulation should not have any effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The forms are required by the statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: No conflict determined.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict determined.
(6) Any additional information or comments: None
TIERING: Is tiering applied? No. Tiering is not applicable as this regulation applies equally to all legislative agents and employers.

GENERAL GOVERNMENT CABINET
State Board of Accountancy

201 KAR 1:300. Rules of professional conduct.

RELATES TO: KRS 325.240, 325.340
STATUTORY AUTHORITY: KRS 325.240
NECESSITY AND FUNCTION: Pursuant to KRS 325.240, the Kentucky State Board of Accountancy may promulgate rules of professional conduct. This administrative regulation is necessary to establish the Kentucky State Board of Accountancy Rules of Professional Conduct that are patterned after the Code of Professional Conduct adopted by the American Institute of Certified Public Accountants (AICPA). The function of this administrative regulation is to adopt appropriate rules of professional conduct to establish and maintain a high standard of integrity and dignity in the public accounting profession. The Kentucky State Board of Accountancy may review the AICPA's interpretations of its code of professional conduct for guidance when applying the provisions of this administrative regulation.

Section 1. Definitions. (1) "AICPA" means the American Institute of Certified Public Accountants.
(2) "Audit" means an examination of financial statements of an

entity in accordance with standards promulgated by the American Institute of Certified Public Accountants (AICPA), including generally accepted auditing standards (GAAS) and upon which an opinion is expressed or disclaimed regarding whether the financial statements conform to generally accepted accounting principles (GAAP) or other comprehensive basis of accounting.

(3) "Board" is defined in KRS 325.220(1).

(4) "Client" means a person or entity which retains a licensee to provide public accounting services.

(5) "Commission" means any item of value given or received by a licensee to or from any third party in return for suggesting the purchase of any product or service.

(6) "Compilation" means presenting in the form of financial statements information that is the representation of management or owners without undertaking to express any assurance on the statements.

(7) "Contingent fee" means a fee established for the performance of any public accounting service pursuant to a written or oral agreement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of the service.

(8) "Financial statement" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources and obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles (GAAP) or a comprehensive basis of accounting other than generally accepted accounting principles (GAAP).

(a) General use financial statements, financial forecasts, projections and similar presentations are considered financial statements.

(b) Financial presentations included in tax returns are not financial statements.

(9) "Generally accepted accounting principles (GAAP)" means the conventions, rules, and procedures which describe accepted accounting practices at a particular time. They include broad guidelines of general applications and detailed practices and procedures that provide a standard by which to measure financial presentations.

(10) "Review" means performing inquiry and analytical procedures that provide the licensee with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements for them to be in conformity with generally accepted accounting principles (GAAP) or, if applicable, with another comprehensive basis of accounting.

Section 2. Independence. (1) A licensee or a firm shall not express an opinion on financial statements of an entity unless he or the firm is independent with respect to the entity.

(2) Prior to expressing an opinion on financial statements, the licensee shall assess his relationship with the entity to determine whether his opinion will be considered independent, objective and unbiased by a third party having knowledge of all facts referring to the relationship between the licensee and the entity.

(3) A licensee shall not be considered to be independent if during the period:

(a) Of the engagement or at the time of expressing his opinion, the licensee or his firm:

1. Had or was committed to acquire any direct or material indirect financial interest in the entity;

2. Was a trustee of any trust or executor or administrator of any estate if the trust or estate had or was committed to acquire any direct or material indirect financial interest in the entity;

3. Had any joint, closely held business investment with the entity or any officer, director or principal stockholder which was material in relation to the licensee's or his firm's net worth;

4. Had any loan to or from the entity or to or from any officer, director or principal stockholder of the entity.

(b) Covered by the financial statements, the period of the professional engagement or at the time of expressing an opinion, the licensee or his firm served as a:

1. Promoter, underwriter, voting trustee, director, officer or in any capacity equivalent to that of a member of management or an employee of the entity; or

2. Trustee for a pension or profit sharing trust of the entity.

(4) The restriction found in subsection (3)(a)4 of this section shall not apply to the following loans obtained from a financial institution prior to January 1, 1992, which are current as to all terms of the loan, were made under normal lending procedures, terms and requirements, and have not been renegotiated:

(a) Loans obtained by a licensee or his firm which are not material in relation to the net worth of the borrower;

(b) Home mortgages; and

(c) Other secured loans, except loans guaranteed by a licensee's firm which are otherwise unsecured.

Section 3. Integrity and Objectivity. A licensee engaged in the practice of public accounting shall maintain objectivity, integrity, and be free of conflicts of interest. The licensee shall not subordinate his judgment to others.

Section 4. Competence. A licensee or a firm engaged in the practice of public accounting shall:

(1) Perform, or offer to perform, only those professional services that he or his firm may reasonably expect to complete with professional competence;

(2) Exercise due professional care in the performance of professional services;

(3) Adequately plan and supervise the performance of professional services; and

(4) Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

Section 5. Standards of Practice. When performing an audit, review, compilation, or any other professional service within the practice of public accounting, the licensee and his firm shall comply with the appropriate practice standards as follows:

(1) Generally accepted auditing standards (GAAS) as reflected in the following documents:

(a) "AICPA Professional Standards", Volume 1, U.S. Auditing Standards, Section AU, as of June 1, 1992;

(b) "AICPA Professional Standards", Volume 1, Attestation Standards, Section AT, as of June 1, 1992;

(c) Government Auditing Standards, "Yellow Book", General Accounting Office, 1988 revision;

(d) "Interpretation of Continuing Education and Training Requirements", Government Auditing Standards, General Accounting Office, April, 1991; and

(2) Other applicable standards:

(a) "AICPA Professional Standards", Volume 2, Accounting and Review Services, Section AR, as of June 1, 1992;

(b) "AICPA Professional Standards", Volume 2, Consulting Services, Section CS, as of June 1, 1992; or

(c) "AICPA Professional Standards", Volume 2, Tax Practice, Section TX, as of June 1, 1992.

(3) These standards are incorporated by reference and may be inspected 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 6. Accounting Principles. (1) A licensee who is aware that the financial statement or financial data of any entity contains a departure from GAAP that has a material effect on the financial statement or financial data taken as a whole shall not:

(a) Express an opinion or state affirmatively that the financial statement or financial data are presented in conformity with GAAP or another comprehensive basis of accounting; or

(b) State that he is unaware of any material modifications that should be made to the statements in order for them to be in conformity with GAAP.

(2) Financial statements may depart from GAAP, if the licensee:

(a) Demonstrates that due to unusual circumstances the financial statements or data would otherwise have been misleading;

(b) Describes the departure;

(c) States the approximate effects, if practicable; and

(d) Explains the reasons why compliance with GAAP would result in a misleading statement.

(3) GAAP is established by principles, practices, or guidance provided in statements, interpretations, bulletins, guides, and other documents identified in "AICPA Professional Standards", Volume 1, U.S. Auditing Standards, Section AU 411, as of June 1, 1992.

(4) These standards are incorporated by reference and may be inspected 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 7. Confidential Client Information. A licensee shall comply with the requirements of KRS 325.440 relating to the disclosure of confidential client information.

Section 8. Client Records. (1) A licensee shall furnish to his client upon request:

(a) A copy of a tax return, report, or other document, any of which was previously issued to or for such client; and

(b) Any accounting or other records received from or on behalf of the client.

(2) The licensee shall not have a lien on these accounting or other records.

Section 9. Advertising and Other Forms of Solicitation. (1) A licensee shall not seek to obtain clients by advertising or other forms of solicitation that are false, misleading, or deceptive.

(2) The use of coercion, overreaching or harassing conduct.

Section 10. Commissions. (1) A licensee shall not:

(a) Pay a commission to obtain a client; or

(b) Accept a commission for a referral to a client of products or services of others.

(2) This rule shall not prohibit:

(a) Payments for the purchase of an accounting practice; or

(b) Retirement payments to individuals, and their heirs or estates, who were formerly engaged in the practice of public accounting.

Section 11. Form of Practice and Name. (1) A licensee shall not practice under a firm name which includes any assumed business name that does not consist of the names of one (1) or more present or former certified public accountant partners or shareholders.

(2) A licensee shall only practice in the form of a sole proprietorship, partnership, or professional service corporation registered with the board.

Section 12. Contingent Fees. (1) A licensee shall not accept or perform any public accounting services for a contingent fee or receive a contingent fee from a client for whom the licensee or the licensee's firm performs:

(a) An audit;

(b) A review;

(c) A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's report does not disclose a lack of independence; or

(d) An examination of prospective financial information.

(2) The prohibition of subsection (1) of this section applies during the period of time in which the licensee is engaged to perform those services and the period covered by any historical financial statements involved in those services.

(3) A licensee in public practice shall not prepare for a contingent fee:

(a) An original or amended tax return or claim for a tax refund. Preparation of an original or amended tax return or claim for tax refund includes giving advice on events which have occurred at the time the advice is given if such advice is directly relevant to determining the existence, character, or amount of a schedule, entry, or other portion of a return or claim for refund; or

(b) An amended federal or state income tax return for a client claiming a refund of taxes because a deduction was inadvertently omitted from the return originally filed when there is no question as to the propriety of the deduction, rather the claim is filed to correct an omission.

(4) The following are examples of circumstances where a contingent fee would be permitted regardless of whether the licensee or licensee's firm is performing the services specified in subsection (1) of this section:

(a) Representing a client in an examination by a revenue agent of the client's federal or state income tax return;

(b) Filing an amended federal or state income tax return claiming a tax refund based on a tax issue that is either the subject of a test case by a different taxpayer or with respect to which the taxing authority is developing a position;

(c) Filing an amended federal or state income tax return or refund claim which claims a tax refund in an amount greater than the threshold for review by the Joint Committee on Internal Revenue Taxation ($1,000,000 at March, 1991) or state taxing authority;

(d) Requesting a refund of either overpayments of interest or penalties charged to a client's account or deposits of taxes improperly accounted for by the federal or state taxing authority in circumstances where the taxing authority has established procedures for the substantive review of such refund requests;

(e) Requesting, by means of protest or similar document, consideration by the state or local taxing authority of a reduction in the assessed value of property under an established taxing authority review process for hearing all taxpayer arguments relating to assessed value; or

(f) Representing a client to obtain a private letter ruling or influencing the drafting of a regulation or statute.

(5) Fees shall not be considered as contingent:

(a) If fixed by courts or other public authorities; or

(b) In tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies. A fee is considered determined based on the findings of governmental agencies, if the licensee can demonstrate a reasonable expectation at the time of the fee arrangement, of substantive consideration by an agency with respect to the licensee's client. The expectation is deemed not reasonable in the case of preparation of original tax returns.

(6) Fees may vary depending on the complexity of services rendered.

ASA L. HORD, CPA, President

APPROVED BY AGENCY: August 5, 1993

FILED WITH LRC: August 9, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1993, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 1993, 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 wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, KY 40202, (502) 588-3037.

REGULATORY IMPACT ANALYSIS

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: 4,638 certified public accountants.

1. First year: No increase since this codifies rules of conduct which have been in effect.

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: No impact.

(2) Effects on the promulgating administrative body: No effect since this codifies rules of conduct which have been in effect.

(a) Direct and indirect costs or savings:

1. First year: No increase since this codifies rules of conduct which have been in effect.

2. Continuing costs or savings: No impact either negatively or positively.

3. Additional factors increasing or decreasing costs: No impact either negatively or positively.

(b) Reporting and paperwork requirements: This does not apply; same board responsibilities.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Reflects national professional standards.

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

(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: No

TIERING: Was tiering applied? No. Only one class of certified public accountants exist.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology

201 KAR 26:115. Definition of psychological testing.

RELATES TO: KRS 319.010

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: The purpose of defining psychological testing is to protect the people of this state from the unlawful, unqualified and improper use of psychological tests. The intent of this regulation is to provide a definition of psychological testing sufficient to allow this board to regulate effectively this aspect of psychological practice. The ability to administer and interpret psychological testing assumes formal academic training in statistics, test construction, sampling theory, tests and measurement, individual differences, and personality theory. In addition, the interpretation of psychological tests for diagnostic purposes assumes formal academic training in the areas of abnormal psychology, psychopathology, psychodiagnosis and, in the case of neuropsychological diagnosis, training in neuropsychology. Competent administration and interpretation of psychological tests also includes formal supervised practice experience.

Section 1. (1) "Psychological testing" is defined as the use of one (1) or more standardized measurement instruments, devices, or procedures including the use of computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation or classification. Psychological testing includes the use of standardized instruments for the purpose of the diagnosis and treatment of mental and emotional disorders and disabilities, the evaluation or assessment of intellectual abilities, personality and emotional states and traits, and neuropsychological functioning.

(2) Psychological tests.

(a) Individual tests for the evaluation of intellectual abilities, examples of which are:

1. The Wechsler series;

2. The Stanford-Binet; and

3. The Kaufman Assessment Battery for Children.

(b) Individual tests of personality and emotional states and traits, examples of which are:

1. The Minnesota Multiphasic Personality Inventory; and

2. Projective techniques including:

a. The Rorschach Ink Blots;

b. Thematic Apperception Test; and

c. The Holtzman Ink Blots.

(c) Individual tests of neuropsychological functioning, examples of which are:

1. The Halstead-Reitan Battery;

2. The Luria-Nebraska Battery; and

3. The "Lezak or Kaplan Battery".

(3) Services which are described as "psychological testing" may only be administered and interpreted by persons licensed or certified by this board or who meet the formal academic training and experience qualifications described above and are otherwise exempt by statute.

(4) Persons licensed or certified by this board, as well as other licensed or certified professionals, may also use tests of language, educational and achievement, as well as tests of abilities, interests, and aptitudes. The use of these tests is not exclusively within the scope of this regulation.

(5) Members of other professions may not train or supervise any person in performing psychological testing.

(6) The practice of psychology shall be construed within the meaning of the definition contained in KRS 319.010(3) without regard to whether payment is received for services rendered.

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written

notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensees and certificate holders.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Defines psychological testing.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology

201 KAR 26:125. Health service provider designation.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: Certain terms are used in the statute regulating the requirements for health service provider designation. This regulation defines those terms.

Section 1. For purposes of this regulation, the designation "health service provider" shall be made on the license of those psychologists who perform activities which include the delivery or supervision of direct health care services to individuals or groups of individuals who are the intended beneficiaries of such services or the supervision of certified psychologists, psychological associates, or applicants for licensure or certification who are delivering such direct health care services.

Section 2. No licensed psychologist who does not have the designation "health service provider" may deliver or supervise direct health care services. Those psychologists granted licensure in the specialty areas of clinical, counseling, or school psychology shall have the designation "health service provider".

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All persons licensed in clinical, counseling, or school psychology.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology

201 KAR 26:145. Ethical violations.

RELATES TO: KRS 319.082

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: KRS 319.032(3) gives the board the authority to set requirements for disciplining licensees or certifi-

cate holders. This regulation establishes violations in the practice of psychology.

Section 1. (1) A licensee or certificate holder shall not engage in sexual contact with a student or supervisee during the period of the professional relationship, or with a client during the period of the professional relationship, nor for at least two (2) years after cessation or termination of the professional relationship.

(2) A licensee or certificate holder shall not solicit, enter into, or promise a client, student, or supervisee another scientific, personal, professional, financial or other relationship if it appears likely that such a relationship would impair the licensee's or certificate holder's objectivity or otherwise interfere with the licensee's or certificate holder's effectively performing his functioning as a professional, or might otherwise harm or exploit the client. A licensee or certificate holder shall refrain from taking on professional or scientific obligations when preexisting relationships would create a risk of harm. A licensee or certificate holder shall not exploit any client, student or supervisee.

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensees and certificate holders.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology

201 KAR 26:151. Repeal of 201 KAR 26:150 and 201 KAR 26:220.

RELATES TO: KRS Chapter 319

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: 201 KAR 26:150 is no longer needed since the board no longer has the authority to grant autonomous functioning to certified psychologists. 201 KAR 26:220 is no longer required since the law now requires the board to certify master's level applicants as psychological associates.

Section 1. 201 KAR 26:150, Guidelines and policies for examinations to grant autonomous functioning, and 201 KAR 28:220, Definitions of terms used by the Board of Examiners of Psychology for meeting educational requirements for certification as a certified psychologist, are hereby repealed.

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: There will not be any

costs or savings.

1 . First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology

201 KAR 26:155. Application procedures and temporary license or certificate.

RELATES TO: KRS 319.050, 319.064

STATUTORY AUTHORITY: 319.032

NECESSITY AND FUNCTION: This regulation sets forth procedures for applying for a license or a certificate and specifies conditions of temporary licensure and certification.

Section 1. Application. (1) An application for a license to practice psychology may be submitted upon receipt of a doctoral degree in psychology and completion of one (1) year of supervised professional experience prior to the granting of the degree, or completion of the first year of a two (2) year postdoctoral supervised professional experience. The application shall be accompanied by the appropriate fee and documentation of education and professional experience.

(2) An application for a certificate to perform functions as a psychological associate may be submitted upon receipt of a master's degree in psychology. The application shall be accompanied by the appropriate fee and documentation of education and professional experience.

Section 2. Temporary Licensure. Upon acceptance of the application for licensure, the candidate may request permission to practice psychology on a temporary basis under the supervision of a licensed psychologist approved by the board. Unless temporary licensure is granted, the applicant may not engage in the practice of psychology until the examination process has been successfully completed.

(1) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(2) Reports of supervision shall be submitted on a regular basis as specified in 201 KAR 26:171 , Section 6.

(3) During the period of temporary licensure, the candidate may not supervise certified psychologists, psychological associates, other applicants for licensure, or temporarily licensed persons, nor shall he engage in an independent practice, except under the employment of his supervising psychologist.

(4) The candidate shall take the Examination for Professional Practice in Psychology (EPPP) at the next regularly-scheduled date.

(5) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or upon the candidate's failure to pass the third administration of the oral examination or upon the withdrawal of the application.

(6) Upon successful completion of the examination procedures, the candidate for licensure may use the title "Licensed Psychologist".

Section 3. Postdoctoral Supervisory Experience. (1) A candidate for licensure in clinical, counseling or school psychology who has not completed one (1) full year of postdoctoral supervised professional experience or the second year of a two (2) year postdoctoral supervised professional experience shall be considered to be temporarily licensed until such experience has been certified for the satisfaction of the board and all examination procedures have been successfully completed.

(2) A candidate for licensure in clinical, counseling or school psychology who is exempt from the requirement of a year of postdoctored supervised experience or who is applying for licensure by reciprocity may petition the board to be temporarily licensed until all examination procedures have been successfully completed.

(3) Upon certification of completion of all supervised professional experience requirements and passage of the EPPP, the candidate for licensure shall be scheduled for the oral examination.

Section 4. Temporary Certification. Upon acceptance of the application for certification, the candidate may request permission to perform certain functions within the practice psychology on a temporary basis under the supervision of a licensed psychologist approved by the board. Unless temporary certification is granted, the applicant may not engage in the practice of psychology until the examination process has been successfully completed.

(1) Supervision during the period of temporary certification shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(2) Reports of supervision shall be submitted on a regular basis as specified in 201 KAR 26: , Section 5(7).

(3) During the period of temporary certification, the candidate may not engage in an independent practice, except under the employment of his supervising psychologist.

(4) The candidate shall take the Examination for Professional Practice in Psychology (EPPP) at the next regularly-scheduled date.

(5) The period of temporary certification shall be terminated upon successful completion of all credentials and examination procedures or upon the candidate's failure to pass the third administration of the EPPP or upon the withdrawal of the application.

(6) Upon successful completion of the examination, the candidate for certification may use the title "Psychological Associate".

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky

40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: Persons seeking temporary permission to practice.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Application process outlined in regulation.

(2) Effects on the promulgating administrative body: Allows temporary permission to practice.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1 . First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology

201 KAR 26:165. Inactive status.

RELATES TO: KRS 319.071

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: KRS 319.071(3) authorizes the board to grant inactive status for a licensee or certificate holder for a period of up to three (3) consecutive years. This regulation establishes the requirements for inactive status.

Section 1. (1) Upon petition to the board, a licensee or certificate holder may be granted inactive status for a period of time not to exceed three (3) consecutive years.

(2) During this period of inactive status granted by the board, the licensee or certificate holder shall not practice psychology.

(3) The licensee or certificate holder shall be relieved of their obligation to pay the renewal fee and of maintaining supervision of their practice, but shall meet the requirements for continuing education.

(4) The licensee or certificate holder may return to active status within the three (3) year period upon:

(a) Notification to the board;

(b) Payment of the current renewal fee;

(c) Resumption of any required supervisory relationship with a supervisor acceptable to the board; and

(d) Demonstration of compliance with all continuing education requirements during the period of inactive status.

(3) If the licensee or certificate holder does not reactivate their credential during the three (3) year period of inactive status, then the credential shall be forfeited and the licensee or certificate holder shall make a new application to the board and be reexamined by the board before a new credential may be issued.

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: Credential holders wishing to go on inactive status.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Established by the regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1 . First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology

201 KAR 26:175. Continuing education.

RELATES TO: KRS 319.050, 319.058, 391.064
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: KRS 319.032 requires administrative regulations governing the completion of continuing education as a condition for renewal of license or certificate.

Section 1. Continuing education shall mean participation in approved programs beyond the basic educational requirements that provide specific content planned and evaluated to improve the license or certificate holder's professional competence, make possible acquisition of new skills and knowledge required to maintain competence, and strengthen the habits of critical inquiry and balanced judgment.

Section 2. Each license and certificate holder shall be required to document the completion of at least thirty (30) continuing education (CE) hours approved by the board within each three (3) year renewal period. A continuing education hour shall be defined as a fifty-five (55) minute clock hour of instruction. Continuing educational hours shall not carry over from one (1) renewal period to the next. Following the effective date of this administrative regulation, the initial requirement shall be prorated as follows:

(1) Holders of licenses or certificates with renewal dates between July 1, 1994 and June 30, 1995 shall have successfully completed ten (10) approved continuing education hours for that renewal period only. For each renewal period after this renewal, the requirement shall be thirty (30) CE hours approved by the board.

(2) Holders of licenses or certificates with renewal dates between July 1, 1995 and June 30, 1996 shall have successfully completed twenty (20) approved continuing education hours for that renewal period only. For each renewal period after this renewal, the requirement shall be thirty (30) CE hours approved by the board.

(3) Holders of licenses or certificates with renewal dates between July 1, 1996 and June 30, 1997 shall have successfully completed thirty (30) approved continuing education hours for this and for each ensuing renewal period.

Section 3. Hours required to satisfy the continuing education requirement shall be completed and reported on a form provided by the board at the time of license or certificate renewal. It shall be the responsibility of the license or certificate holder to maintain and provide adequate records including certificates of attendance and documentation of completion of approved programs of continuing education hours.

Section 4. Only continuing education activities approved by the board shall satisfy continuing education requirements for renewal of a license or certificate. It shall be the responsibility of the license or certificate holder to determine prior to attending that the specific continuing education program has been approved by the board or is offered or sponsored by an organization approved by the board to sponsor continuing education programs.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) The following organizations are authorized to offer or sponsor continuing education programs for which participation shall satisfy the requirements of this administrative regulation:

(a) The American Psychological Association; American Medical Association; American Psychiatric Association; National Association of Social Workers;

(b) Recognized state, regional, national, or international psychological associations;

(c) Courses for graduate-level academic credit or workshops in psychology or psychiatry offered by national, regional, or state accredited academic institutions or their affiliated hospitals or medical centers;

(d) The Kentucky Mental Health Institute and The Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department of Mental Health and Mental Retardation Services.

(2) The board may approve other organizations as sponsors of continuing education at its discretion.

(a) The application for approval shall be accompanied by a fee of fifty (50) dollars.

(b) Each approved sponsor shall submit an annual report of programs offered, and any other such information as the board shall request.

(c) The board may renew its approval of a sponsor of continuing education on an annual basis and may charge a fee not to exceed fifty (50) dollars for such renewal.

(3) The board may approve specific continuing education programs at its discretion.

(a) The application for approval shall be accompanied by a fee of fifty (50) dollars.

(b) The program shall meet the criteria outlined in Section 6 of this administrative regulation.

(c) The program shall be presented one (1) time following its approval by the board; a request may be made for a repeated offering by submission of a request form and a renewal fee of ten (10) dollars for each request.

Section 6. Continuing education programs which satisfy the requirements for license or certificate renewal shall meet the following criteria:

(1) The program is offered or sponsored by an organization which has been approved by the board, or the specific program has been approved by the board;

(2) The program has a clearly-stated purpose and defined content area and is consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) Presenters are professionals qualified in the defined content area;

(4) The program's time is clearly stated. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Attendance is recorded by the program's sponsor;

(6) Documentation of completion is provided to the participant;

(7) Participants are required to complete an evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn CE hours on the following basis:

(a) Each one (1)-hour semester course shall be judged to be the equivalent of fifteen (15) CE hours for the purposes of meeting the requirements of this administrative regulation; and

(b) Each one (1)-hour quarter course be the equivalent of nine (9) CE hours for the purposes of meeting the requirements of this administrative regulation.

(2) The teaching of a graduate-level course in psychology at an accredited academic institution shall earn CE hours on the following basis: teaching a three (3)-hour semester or quarter course shall be judged to be the equivalent of six (6) CE hours for purposes of meeting the requirements of this administrative regulation. Within any given renewal period, credit may be obtained not more than once for teaching a particular course. No more than six (6) CE hours may be completed through these teaching activities.

(3) The teaching of approved continuing education workshops and programs shall earn CE hours on a one-to-one (1 to 1) basis within any given renewal period, credit may be obtained not more than once for teaching a particular workshop or program. No more than six (6)

CE hours may be completed through these teaching activities.

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas
(1) Type and number of entities affected: All licensees and certificate holders.
(a) Direct and indirect costs or savings to those affected: Persons licensed or certified will incur a modest cost for continuing education programs.
1. First year: Minimal
2. Continuing costs or savings: Minimal
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Continuing education shall be reported at the time of renewal.
(2) Effects on the promulgating administrative body: This will require the agency to review documentation of CE hours.
(a) Direct and indirect costs or savings: Minimal
1 . First year: Minimal
2. Continuing costs or savings: Minimal
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Reporting requirements are in the regulation.
(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:
The statute requires the promulgation of this regulation.
(5) Identify any statute, administrative regulation or government policy which
may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology

201 KAR 26:185. Requirements for granting licensure or certification in psychology to an applicant licensed or certified in another state.

RELATES TO: KRS 319.032
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: This regulation sets forth procedures for the granting of a license or certificate to an applicant who is licensed or certified in another state which does not have an agreement of reciprocity with this board.

Section 1. The board shall consider the following criteria in reviewing the credentials of an applicant for licensure or certification in psychology who holds a current valid license or certificate to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards but which does not have an agreement of reciprocity with this board:
(1) A graduate degree in psychology, at the doctoral level for licensure and at the master's level for certification and other educational requirements as specified in 201 KAR 26:200.
(2) Standards of training and experience as specified in 201 KAR 26:190. When the applicant for licensure has less than one (1) year of postdoctoral supervised experience, a determination may be made by the board of the applicant's practice experience, with five (5) years of full-time practice after licensure or certification as an equivalent of the required year of postdoctoral experience.
(3) An applicant for licensure shall submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination Service and owned by the Association of State and Provincial Psychology Boards. The applicant shall obtain a score equal to passage of seventy (70) percent of the test items.
(4) The board shall also review the applicant's record as to complaints, or hearings held in previous jurisdictions.
(5) Applicant's professional references.

Section 2. An applicant for licensure shall submit to a structured oral examination administered by two (2) licensed psychologists, at least one (1) of whom is licensed in the candidate's specialty area.
(1) The examination shall cover ethical principles, professional practice in the candidate's specialty area, and Kentucky mental health law.
(2) Each examiner shall independently rate the applicant's performance.
(3) The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.
(4) Both examiners shall rate the applicant as having passed in order for the applicant to have passed.

Section 3. An applicant for licensure with the health service provider designation shall demonstrate that he is qualified in at least one (1) of the specialty areas of clinical, counseling, or school psychology.

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: Persons applying for licensure from another state not having reciprocity with Kentucky.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Application procedures are set forth.

(2) Effects on the promulgating administrative body: Establishes procedures for licensing persons from other states not having a reciprocal agreement with Kentucky.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology

201 KAR 26:215. Nonresident status.

RELATES TO: KRS 319.015

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: KRS 319.017(7) allows a nonresident psychologist temporarily employed in the state to render psychological services for no more than thirty (30) days every two (2) years. This regulation establishes the requirements for this practice.

Section 1. (1) Upon registration with the board, a licensee or certificate holder from another state may render psychological services in this state for not more than thirty (30) days every two (2) years.

(2) The nonresident licensee or certificate holder shall submit a written report to the board of each date on which psychological services were rendered in this state, and the location of the site of those services.

(3) For purposes of this section, the provision of psychological services on a given date, regardless of the period of time of those services, shall constitute one (1) day.

CHARLES H. MORGAN, Board Chairman

APPROVED BY AGENCY: August 13, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: Person licensed to practice psychology in another state coming to Kentucky to practice less than 30 days.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Psychologist must report to the board as specified in regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:260. Crow hunting season.

RELATES TO: KRS 150.015, 150.105, 150.170, 150.175, 150.235, 150.330, 150.340, 150.600, 150.630, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.105, 150.170, 150.175, 150.340, 150.600, 150.630

NECESSITY AND FUNCTION: This administrative regulation pertains to seasons for the taking of crow. The framework of this administrative regulation falls within the season guidelines prescribed by the United States Fish and Wildlife Service. The function of this administrative regulation is to provide for the prudent taking of crows within reasonable seasonal restrictions based upon an adequate supply.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit, or anchored, stationary, or drifting boat from which hunting occurs.

(2) "Decoy" means any type of visual device used to entice birds into shooting range.

(3) "Call" means any type of auditory device used to attract crows into shooting range.

(4) "Depredation" means any act committed by crows which would result in a damage or economic loss of ornamental or shade trees, agricultural crops, livestock, or wildlife, or when crows are concentrated in such numbers as to constitute a health hazard or other nuisance.

Section 2. Season. Crows shall be taken only during the period 1 September through 12 November and 9 January through 28 February. Persons taking or attempting to take crows must have a valid hunting license in possession.

Section 3. Shooting Hours. One-half (1/2) hour before sunrise to sunset.

Section 4. Use of Mechanical and Electronic Attracting Devices. Mechanical and electronic attracting devices for crow hunting may only be used during the open season defined in Section 2 of this administrative regulation.

Section 5. Acts of Depredation. Crows observed committing or about to commit acts of depredation may be taken year round; however, persons attempting to take depredating crows shall not use blinds, decoys, calls or other lures to attract birds into shooting range during the closed season.

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: June 15, 1993

FILED WITH LRC: July 29, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993 at 2 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 1993, 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 canceled. 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, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license. Indirect costs would be determined by the hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this administrative regulation would be required to possess a valid hunting license ($12.50 for residents) unless exempt by administrative regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs and savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this administrative regulation is $140,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about $204 a season on food, lodging, transportation and equipment. This will add about $18,360,000 to the income of local businesses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None known.

(a) Necessity of proposed administrative 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. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers.

Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Ch. 1 (10/01/91)/ Part 20/ Page 295/ Para. 20.133, and 50 CFR Ch. 1 (10/01/91)/ Part 21/ Page 321/ Para. 21.43.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Crow - season may not be scheduled to occur during the peak nesting period within the state (March - June) with a 124 day maximum season length.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures.

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

401 KAR 5:036. Groundwater protection plans.

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS 224.01-010, 224.10-100, 224.70-100, 224.70-110

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt administrative regulations to protect waters of the Commonwealth and to prevent pollution of waters of the Commonwealth. This administrative regulation establishes the requirement to prepare and to implement groundwater protection plans to ensure protection for all current and future uses of groundwater and to prevent groundwater pollution.

Section 1. Definitions. The following definitions describe terms used in this administrative regulation. Terms not defined below shall have the meanings given to them by KRS 224.01-010 or if not so defined, the meanings attributed by common use.

(1) "Abandoned well" means a well not currently in use and not intended for future use.

(2) "Agricultural production facility" means any tract of land except residences including all income-producing improvements; (a) Used for the production of livestock, livestock products, poultry, poultry products, or the growing of tobacco or other crops including timber;

(b) Devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government; or

(c) Commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.

(3) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water of the Commonwealth. Best management practices also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(4) "Bore hole" means a hole drilled into the soil for exploratory or sampling purposes.

(5) "Bulk quantities" means undivided quantities of any substance of greater than fifty-five (55) U. S. gallons liquid measure or 100 pounds net dry weight transported or held in an individual container.

(6) "Commercial" means services at stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding households and industries.

(7) "Conservation compliance plan" means a plan containing best management practices developed for persons engaged in agricultural production activities by the U. S. Department of Agriculture Soil Conservation Service, in conjunction with local conservation districts.

(8) "Container" means any portable enclosure in which a material is stored, transported, treated, disposed, or otherwise handled.

(9) "Core hole" means a hole drilled for the purpose of obtaining a rock sample.

(10) "Corrective action" means an activity or measure taken to remedy groundwater pollution.

(11) "Floor drain" means an opening in the floor used to collect spills, water, or other liquids.

(12) "Generic groundwater protection plan" means a groundwater protection plan that can be applied to activities conducted at different locations because the activities are substantially identical and because the potentials of the activities to pollute groundwater are substantially the same.

(13) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, or solution conduits.

(14) "Groundwater pollution" means water pollution as defined in KRS 224.01-010 of groundwaters of the Commonwealth.

(15) "Groundwater protection plan" means a document that establishes a series of practices designed to prevent groundwater pollution.

(16) "Hydrogeologic sensitivity" means an assessment of the potential ease and speed of vertical infiltration or recharge of a liquid through the soil and the unsaturated zones combined with assessments of the maximum potential flow rate and dispersion potential after entry into the principal or uppermost saturated zone.

(17) "Industrial" means manufacturing or industrial processes, including, but not limited to, 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 or 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.

(18) "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of the rock has occurred due to flowing groundwater.

(19) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(20) "Loading and unloading areas" means areas used for loading

and unloading, and related handling of raw materials, intermediate substances, products, wastes, or recyclable materials. Loading and unloading areas include, but are not limited to, areas used to load and unload drums, trucks, and railcars.

(21) "On-site sewage disposal system" means a complete system installed on a parcel of land, under the control of ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" and "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of sewage pretreatment unit, distribution box, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system, or wasteload to overcome the site limitations;

(c) An alternative system consisting of a sewage pretreatment unit, necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption systems or conventional, modified, or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system or connection to a municipal sewer.

(22) "Pesticide" means:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; or

(c) Any substance or mixture of substances intended to be used as a spray adjuvant.

(23) "Privately-owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a publicly-owned treatment works.

(24) "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock.

(25) "Sinking stream" means a surface stream in a karst region that disappears underground usually through gradual seepage of flow along the channel bottom.

(26) "Storing" means the containing of materials, products, substances, wastes, or other pollutants on a temporary basis in such a manner as not to constitute disposal.

(27) "Surface impoundment" means 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 liquids or solids.

(28) "Timber" means trees produced and harvested as agricultural crops without the application of pesticides or fertilizers or with the application of pesticides or fertilizers if in accordance with a conservation compliance plan.

(29) "Water well" or "well" means any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including but not limited to culinary and household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes and industrial, irrigation, and dewatering purposes.

(30) "Wellhead protection area" means the surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field or spring or an area defined as a wellhead protection area in a county water supply plan.

(31) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

Section 2. Scope and Applicability. (1) Scope. The goal of this administrative regulation is the prevention of groundwater pollution. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.

(2) Applicability.

(a) Persons engaging in agricultural production activities at agricultural production facilities shall prepare and implement a groundwater protection plan in accordance with the provisions of Section 5 of this administrative regulation. The agricultural production activities that are subject to this administrative regulation and the requirements for the preparation and implementation of groundwater protection plans for agricultural production activities are established in Section 5 of this administrative regulation which shall be the sole provisions of this administrative regulation applying to agricultural production activities.

(b) Except for agricultural production activities at agricultural production facilities and as provided in subsections (3) and (4) of this section, any person responsible for conducting any of the following activities shall prepare and implement a groundwater protection plan in accordance with the requirements of this administrative regulation:

1. Storing or related handling of pesticides or fertilizers for commercial purposes;

2. Storing or related handling of pesticides or fertilizers for the purpose of distribution to a retail sales outlet;

3. Applying of pesticides or fertilizers for commercial purposes;

4. Applying of fertilizers or pesticides for public right-of-way maintenance or institutional lawn care;

5. Land treatment or land disposal of a pollutant;

6. Storing, treating, disposing, or related handling of hazardous waste, solid waste, or special waste in landfills, incinerators, surface impoundments, tanks, drums or other containers, or in piles;

7. Commercial or industrial storing or related handling in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants held in tanks, drums or other containers, or in piles;

8. Transmission in pipelines of raw materials, intermediate substances or products, finished products, or other pollutants;

9. Installation or operation of on-site sewage disposal systems;

10. Storing or related handling of road oils, dust suppressants, or deicing agents at a central location;

11. Application or related handling of road oils, dust suppressants or deicing materials;

12. Mining and associated activities;

13. Installation, construction, operation, or abandonment of wells, bore holes, or core holes;

14. Collection or disposal of pollutants in an industrial or commercial facility through the use of floor drains which are not connected to on-site sewage disposal systems, closed-loop collection or recovery systems, or privately- or publicly-owned treatment works;

15. Impoundment or containment of pollutants in surface impoundments, lagoons, pits, or ditches; or

16. Commercial or industrial transfer, including loading and unloading, in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants.

(3) General exclusion. Any person who conducts an activity

identified in subsection (2) of this section shall not be required to prepare or to implement a groundwater protection plan for that activity if that person can demonstrate by substantial evidence based on the factors set forth in this subsection, the activity has no reasonable potential of altering the physical, thermal, chemical, biological, or radioactive properties of the groundwater in a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life, to the use of groundwater as present or future sources of public water supply or to the use of groundwater for recreational, commercial, industrial, agricultural, or other legitimate purposes. The demonstration shall at a minimum consider the following factors:

(a) Hydrogeologic sensitivity at or near the location of the activity;

(b) Quantity of the pollutants, including the cumulative potential to pollute from small discharges, spills, or releases which individually would not have the potential to pollute;

(c) Physical, chemical, and biological characteristics of the pollutants such as solubility, mobility, toxicity, concentration, and persistence;

(d) Use of the pollutants at the locations of the activities; and

(e) Present and potential uses of the groundwater.

(4) Specific exclusions. The provisions of this administrative regulation shall not apply to the following activities:

(a) Normal use or consumption of products sized and packaged for personal use by individuals;

(b) Retail marketing of products sized and packaged for personal use or consumption by individuals;

(c) Activities conducted entirely inside enclosed buildings if:

1. The building has a floor sufficient to prevent the release of pollutants to groundwater; and

2. There are no floor drains, or all floor drains within the building are connected to an on-site sewage disposal system, closed-loop collection or recovery system or a privately- or publicly-owned treatment works;

(d) Storing, related handling, or transmission in pipelines of pollutants that are gases at standard temperature and pressure;

(e) Storing municipal solid waste in a container located on property where the municipal solid waste is generated and which is used solely for the purpose of collection and temporary storage of that municipal solid waste prior to off-site disposal;

(f) Activities associated with sewer lines, or water lines;

(g) Storing water in ponds, lakes or reservoirs;

(h) Impounding storm water, silt, or sediment in surface impoundments;

(i) Application or related handling of chloride-based deicing materials used on roads or parking lots;

(j) Emergency response activities conducted in accordance with local, state, and federal law;

(k) On-site fire fighting activities; or

(l) Conveyance or related handling by motor vehicle, rolling stock, vessel, or aircraft.

(5) Relationship to other programs. Nothing in this administrative regulation shall abrogate the duty of a person to comply with the statutes and other administrative regulations administered by the cabinet, with the statutes and administrative regulations administered by other state and federal agencies, or with statutes and ordinances administered by a local government.

Section 3. Preparation of Groundwater Protection Plans. (1) General requirements. A groundwater protection plan establishes a series of practices to be followed by the person required to prepare and to implement it. The practices established by a groundwater protection plan shall be designed and implemented in a manner that will prevent groundwater pollution. This section describes the contents of site-specific and generic groundwater protection plans. Any person conducting an activity identified in Section 2(2) of this administrative regulation shall determine if an exclusion of Section 2(3) or (4) of this administrative regulation applies to that activity.

(2) Deadlines for preparation and implementation. Except for agricultural production activities subject to the provisions of Section 5 of this administrative regulation and activities excluded by Section 2(3) or (4) of this administrative regulation, any person required to prepare and to implement a groundwater protection plan pursuant to Section 2 of this administrative regulation, shall prepare and implement a site-specific or generic groundwater protection plan within one (1) year of the effective date of this administrative regulation, or upon commencement of the regulated activity, whichever is later.

(3) Elements of generic and site-specific groundwater protection plans. Both generic and site-specific groundwater protection plans shall contain the following:

(a) General information regarding the facility and its operation, including the name of the facility, the address of the facility, and the name of the person responsible for implementing the plan;

(b) Identification of all activities identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation;

(c) Identification of all practices chosen for the plan to protect groundwater from pollution;

(d) An implementation schedule for the practices selected for the plan;

(e) A description of and implementation schedule for employee training necessary to ensure implementation of the plan;

(f) An inspection schedule requiring regular inspections as needed to ensure that all practices established are in place and properly functioning;

(g) A certification by the person responsible for implementing the plan or a duly authorized representative that the plan complies with the requirements of this administrative regulation, and that the person responsible for implementing the plan has reviewed the terms of the plan and will implement its provisions.

(4) Selection of practices for groundwater protection. Any person required to prepare a groundwater protection plan pursuant to this section shall evaluate technological means for protection of groundwater from pollution that may result from activities addressed by the plan and shall select practices for the plan which protect groundwater from pollution. The groundwater protection practices chosen for a groundwater protection plan may include but are not limited to:

(a) Equipment design;

(b) Operational procedures;

(c) Preventive maintenance techniques;

(d) Construction techniques;

(e) Personnel training;

(f) Spill response capabilities;

(g) Alternative materials or processes;

(h) Implementation of new technology;

(i) Modification of facility or equipment;

(j) Spill prevention control and countermeasure plans;

(k) Best management practices;

(l) Hazardous waste contingency plans;

(m) Other plans prepared pursuant to other programs which protect groundwater from pollution;

(n) Run-off or infiltration control systems;

(o) Siting considerations; and

(p) Any other practice which will protect groundwater from pollution.

(5) Specific practices. In selecting practices to protect groundwater for the activities identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation any person preparing a groundwater protection plan shall consider the nature of the pollutant and the hydrogeologic characteristics at or near the location of the activity and shall comply with the provisions of this subsection in selecting those practices:

(a) Loading and unloading areas. Loading and unloading areas shall have spill prevention and control procedures and operation

procedures designed to prevent groundwater pollution. Spill containment and cleanup equipment shall be readily accessible.

(b) On-site sewage disposal systems. No person shall install a new or replace an existing on-site sewage disposal system if a publicly- or privately-owned treatment works capable of treating the pollutants to be discharged is available.

(c) Floor drains. Any person using existing floor drains shall evaluate those floor drains to determine if they discharge to an on-site sewage disposal system, to a closed-loop collection or recovery system, or to privately- or publicly-owned treatment works. If drains are identified which do not discharge to an on-site sewage disposal system, a closed-loop collection or recovery system, or privately- or publicly-owned treatment works, that person shall terminate the discharge or connect it to an on-site sewage disposal system, a closed-loop collection or recovery system, or a privately- or publicly-owned treatment works. No person shall install a floor drain unless it is connected to an on-site sewage disposal system, closed-loop collection or recovery system, or privately- or publicly-owned treatment works.

(d) Tanks and sumps. Any person using a tank or sump shall prepare and implement good housekeeping practices, operating procedures, operator training, and spill response procedures. In addition, any person using a tank or sump shall consider leak control devices, secondary containment, integrity testing, mechanical inspections, and overfill protection devices. Secondary containment is not required for sumps and tanks that are used solely to provide secondary containment.

(e) New surface impoundments, lagoons, pits or ditches. Any person who constructs a new surface impoundment, lagoon, pit or ditch which will contain a pollutant shall evaluate the site's hydrogeology and shall design and operate it to minimize discharges to soil. However, soils may be used to construct liners under appropriate conditions. All necessary and appropriate measures shall be taken to prevent groundwater pollution. The person shall consider the use of liners, secondary containment, leak detection devices, and other appropriate and effective control systems. Secondary containment is not required for new surface impoundments, lagoons, pits, and ditches that are used solely to provide secondary containment.

(6) Exceptions to specific requirements.

(a) The provisions of subsection (5) of this section shall not apply to activities that are governed by other federal, state or regulatory programs that meet the requirements of subsection (7) of this section while the person conducting the activities remains in compliance with the other program.

(b) Variances from the provisions of subsection (5) of this section may be granted by the cabinet upon a showing of good cause, but in no event shall any person required to prepare a groundwater protection plan pursuant to this section take any actions contrary to the provisions of subsection (5) of this section without prior written approval of the cabinet.

(7) Incorporation of requirements of other regulatory programs.

(a) Groundwater protection activities required by other federal, state, or local regulatory programs may be incorporated into a site-specific or generic groundwater protection plan by reference if the other regulatory program contains the following:

1. Management and design standards;

2. Mandatory monitoring for groundwater pollution or methods of detecting discharges, spills, or releases to groundwater; and

3. Specific corrective action criteria.

(b) The plan shall identify each activity covered by the other regulatory program. The person responsible for implementing the plan shall certify compliance with the other regulatory program. The provisions of the other program shall be the groundwater protection plan for purposes of this administrative regulation for the activities covered by the other regulatory program. If activities identified in Section 2(2) of this administrative regulation and not excluded in Section 2(3) or (4) of this administrative regulation are conducted which are not covered by the other regulatory program, the plan shall contain separate practices designed to protect groundwater from pollution for each activity not covered by the other regulatory program.

(8) Generic groundwater protection plans. A generic groundwater protection plan may govern all or part of a person's activities. A generic groundwater protection plan shall not be sufficient by itself if it does not address all activities conducted by the person that are identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation. A generic groundwater protection plan shall be prepared in accordance with subsections (1) through (7) of this section.

(a) A person responsible for preparing and implementing a groundwater protection plan required by this administrative regulation may apply one (1) provision of the plan to all substantially identical activities if factors identified in Section 2(3) of this administrative regulation do not cause substantial differences in the potential to pollute among locations. If substantial differences do exist, the plan shall provide separate site-specific or region-specific preventive measures, as necessary, for the activities.

(b) A person responsible for preparing a groundwater protection plan governed by this section may use a generic groundwater protection plan prepared by another person or group, including a trade organization, if:

1. The activities identified in the generic groundwater protection plan are substantially identical;

2. The factors identified in Section 2(3) of this administrative regulation do not cause substantial differences in the potentials to pollute among locations; and

3. The groundwater protection plan has been reviewed and approved by the cabinet.

(c) A generic groundwater protection plan may consist of requirements imposed by other regulatory programs designed to protect groundwater or programs offering technical assistance for groundwater protection if the cabinet has approved the requirements of the other program as a generic groundwater protection plan. Any person using a generic groundwater protection plan from another program pursuant to this paragraph as a part of, or all of, his plan shall certify in his plan that he is subject to the program and in compliance with its provisions. Any activities which are not addressed by the program shall be addressed separately in the groundwater protection plan.

(d) Any persons conducting an activity listed in this subsection who does not prepare a groundwater protection plan for that activity or does not use another approved generic groundwater protection plan for that activity shall implement the provisions of the generic groundwater protection plan prepared by the cabinet. The cabinet, in cooperation with other appropriate state agencies, shall prepare generic groundwater protection plans for:

1. Use of existing residential septic systems; and

2. Construction, operation, closure, and capping of water wells.

(e) A generic groundwater protection plan that has been approved by the cabinet may be incorporated by reference in a facility's groundwater protection plan; however, each person responsible for implementing the generic plan at a site shall maintain a copy of the plan at an appropriate, accessible location. Any person using a generic groundwater protection plan shall identify the activities governed by the plan and attach the identification to the copy of the generic plan.

(f) Any person preparing a new or revised generic groundwater protection plan to be approved by the cabinet shall submit that plan to the cabinet for approval. When that person submits that plan to the cabinet that person shall also place a notice in statewide publications. That notice shall provide for a thirty (30) day comment period and shall identify activities that are addressed by the proposed generic groundwater protection plan. The notice shall describe the procedure for review by the public of the plan and the procedures and time

frames for providing comments. Notice shall also be given by mail to anyone who has requested in writing to be placed on a mailing list for purposes of this administrative regulation.

Section 4. Implementation of Groundwater Protection Plans. (1) Record retention requirements.

(a) Any site-specific groundwater protection plan required by Sections 2 through 4 of this administrative regulation, and any documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, at the location of the activity if the location is normally attended at least eight (8) hours per day, or at the nearest office of that person's activity if the facility is not so attended.

(b) Any generic groundwater protection plan and any documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, in as many locations as necessary to ensure compliance. Individual homeowners are not required to maintain a copy of the generic groundwater protection plan for residential septic systems at their residences.

(c) Unless the cabinet approves another retention period for a person, all records evidencing compliance shall be maintained and available for review by the cabinet for a period of six (6) years after their preparation.

(2) Amendment of groundwater protection plans. Prior to conducting any new or modified activity, any person conducting that activity shall amend the groundwater protection plan, as necessary, to address the new or modified activity.

(3) Review and recertification of groundwater protection plans. Each groundwater protection plan shall be reviewed in its entirety every three (3) years, by the persons responsible for the plan, updated if necessary, and recertified. To the extent possible, the review shall include a reevaluation of the design and operation procedures for the pollution prevention practices previously selected for the plan to ensure that they are effective. (4) Submission of groundwater plans to cabinet. Upon written request of the cabinet, any person required to prepare a groundwater protection plan pursuant to this administrative regulation shall submit a copy of the plan to the cabinet within thirty (30) days.

(5) Submission of additional information to the cabinet. Upon review of a groundwater protection plan which has been submitted to the cabinet, the cabinet may require any person responsible for preparation or implementation of a plan to submit any of the following information that the cabinet deems necessary:

(a) For a site-specific groundwater protection plan, and for a generic groundwater protection plan in effect at a specific location, the location of all buildings, structures, roads, utilities, drainage pathways, and boundaries by using a narrative description or by using a map, diagram, or drawing;

(b) For a generic groundwater protection plan that applies to more than one (1) location, identification of the geographic region to which the generic groundwater protection plan applies, and an explanation as to why that region was selected and why one (1) plan is appropriate for all activities addressed by the plan for all sites within the region;

(c) For a generic groundwater protection plan that applies to more than one (1) location, to the extent possible, a description of the nature and number of activities, and their associated facilities, that are expected to be governed by the generic groundwater protection plan;

(d) Summary of reasonably available hydrogeologic information as follows:

1. Identification of location of sinkholes, sinking streams, springs, streams, lakes, ponds, and ditches;

2. Description of soil survey information;

3. Identification and location of currently usable wells, abandoned wells, and wellhead protection areas;

4. Identification of subsidence areas; and

5. Description of any other relevant hydrogeologic data known to the person preparing or implementing the groundwater protection plan; and

(e) Any other site-specific groundwater or geologic information, which is known and readily available to the person responsible for preparing or implementing the plan but not to the cabinet, that the cabinet deems necessary.

(6) Revisions to plans after cabinet review. If the cabinet reviews a groundwater protection plan and determines that it does not meet the requirements of this administrative regulation, the cabinet shall notify the person responsible for preparing or implementing the plan of the deficiency in the plan. That person shall revise the plan to correct the deficiencies identified by the cabinet and submit the revised plan to the cabinet for further review. Unless an extension of time is granted by the cabinet or the notice of deficiency is withdrawn by the cabinet, the person submitting the revised plan shall have thirty (30) days from issuance of the notice of the deficiencies to submit the revised plan. The cabinet shall review the revised plan and notify the person submitting the revised plan of its final determination.

(7) Public inspection of groundwater protection plans.

(a) Any person who desires to review a groundwater protection plan shall send a written request to the person required to prepare and to implement the groundwater protection plan.

(b) Any person who receives a written request to review the groundwater protection plan shall within ten (10) days:

1. Send a written response to the person requesting to inspect the groundwater protection plan stating that the groundwater protection plan may be reviewed at:

a. The Division of Water in Frankfort;

b. A regional office of the Division of Water;

c. The facility; or

d. A local public library; or

2. Send a written response to the person requesting to inspect the groundwater protection plan, stating the reason that a groundwater protection plan was not required to be prepared.

(c) Any person who designates a review location for a groundwater protection plan shall send a copy of the groundwater protection plan to the location designated for review within ten (10) days of receiving a written request to review the plan.

(8) Requirements upon transfer of property. Upon any subsequent transfer of a facility for which a groundwater protection plan has been prepared, the seller shall provide the purchaser with a copy of the most recent groundwater protection plan prepared for the facility pursuant to this administrative regulation.

Section 5. Groundwater Protection Plans for Agricultural Production Activities. (1) Notwithstanding any other section of this administrative regulation, any person engaged in agricultural production activities at an agricultural production facility shall prepare and implement a groundwater protection plan for those activities in accordance with the provisions of this section.

(2) Persons engaging in agricultural production activities for which conservation compliance plans are in effect on the effective date of this administrative regulation shall comply with those plans, which shall constitute their groundwater protection plans until a statewide agricultural groundwater protection plan is approved by the cabinet. Upon approval of the statewide agricultural groundwater protection plan by the cabinet, all persons engaging in agricultural production activities shall comply with the statewide agricultural groundwater protection plan unless a regional agricultural groundwater protection plan has been approved by the cabinet in response to region-specific groundwater problems. If a regional agricultural groundwater protection plan has been approved by the cabinet, all persons engaging in agricultural production activities within the identified region shall comply with the regional agricultural groundwater protection plan.

(3) All persons engaging in agricultural production activities for which no conservation compliance plan is in effect on the effective

date of this administrative regulation shall comply with all best management practices recommended by the state Soil and Water Conservation Commission. Those best management practices shall constitute the groundwater protection plans for these agricultural production activities until the statewide agricultural groundwater protection plan is approved by the cabinet. Upon approval of the statewide agricultural groundwater protection plan, that plan shall constitute the groundwater protection plan for all persons engaging in agricultural production activities. If a regional agricultural groundwater protection plan has been approved by the cabinet, all persons engaging in agricultural production activities within the identified region shall comply with the regional agricultural groundwater protection plan.

(4) All agricultural groundwater protection plans shall be established by the Soil and Water Conservation Commission Peer Group in accordance with 402 KAR 2:030. The agricultural groundwater protection plans shall be effective for purposes of this administrative regulation upon approval by the cabinet.

(5) All agricultural groundwater protection plans shall provide for practices designed to prevent groundwater pollution that may result from the following agricultural production activities at agricultural production facilities:

(a) Handling or storage of animal waste;

(b) Handling, storing, or application of pesticides, fertilizers, or other agricultural chemicals;

(c) Installation, construction, operation, or abandonment of wells;

(d) Disposal of waste materials including wastewater;

(e) Management of feedlots;

(f) Storage or management of fuels or petroleum products;

(g) Management of karst features, including sinkholes;

(h) Containment of pollutants in impoundments, lagoons, pits or ditches; and

(i) Any other activity identified by the Soil and Water Conservation Commission Peer Group established by 402 KAR 2:030 as a potential cause of groundwater pollution.

(6) The statewide generic agricultural groundwater protection plan shall provide for known differences in hydrogeology throughout the state. In addition, all agricultural groundwater protection plans shall contain, as appropriate, nutrient management practices, animal waste management practices, pesticide and fertilizer management practices, sediment control practices, and conservation tillage practices designed to prevent groundwater pollution for each category of agricultural production.

(7) If the cabinet determines that groundwater pollution has occurred in a region because of agricultural production activities conducted at agricultural facilities, a regional agricultural groundwater protection plan shall be prepared by the Soil and Water Conservation Commission Peer Group to address the agricultural production activities within the affected region. All persons engaging in agricultural production activities within the affected region shall comply with the provisions of the regional agricultural groundwater plan which has been approved by the cabinet.

(8) The cabinet shall provide written notice to the local conservation district, the Soil and Water Conservation Peer Group, and all persons engaging in agricultural production activities in an affected region of any documented groundwater pollution. The cabinet shall work with the conservation district, the peer group, and persons engaging in agricultural production activities in the affected region to develop an appropriate corrective action plan.

(9) A person engaging in agricultural production activities who is in a region where groundwater pollution has been found by the cabinet shall be presumed to be in compliance with this administrative regulation if that person has timely and properly implemented all practices required by the portions of the statewide agricultural groundwater protection plan which apply to that person's activities.

(10) The statewide agricultural groundwater protection plan shall be prepared and approved no later than two (2) years from the effective date of this administrative regulation. All persons engaging in agricultural production activities shall fully implement the provisions of the statewide agricultural groundwater protection plan no later than seven (7) years from the effective date of this administrative regulation. Persons who have timely initiated implementation of the statewide agricultural groundwater production plan may be given extensions of time, upon request, by the cabinet for completing implementation of the plan upon a demonstration of good cause.

(11) Persons engaging in agricultural production activities located within a region governed by an approved regional agricultural groundwater protection plan which has been prepared in response to groundwater pollution within the region shall immediately implement the regional agricultural groundwater protection plan and conform to the compliance schedule approved by the cabinet for the corrective action plan.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for September 28, 1993 at 7 p.m. eastern time at the auditorium, Academic Services Building at Kentucky State University, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by September 23, 1993, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Natural Resources and Environmental Protection Cabinet with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Mr. Wilson no later than the close of the hearing on September 28, 1993. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability and provides, on request, reasonable accommodations including auxiliary aids and services necessary to afford an individual with disability an equal opportunity to participate in all services, programs, and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate forms for printed materials, should be submitted to Mr. Wilson at the address below.

CONTACT PERSON: Jack A. Wilson, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: Jack A. Wilson, Director

(1) Type and number of entities affected: This proposed regulation establishes the requirements for developing and implementing groundwater protection plans to prevent pollution of the groundwaters of the Commonwealth. All activities do not have a potential to pollute groundwater. Some activities are expressly exempted. In addition, an entity who would otherwise be required to develop and implement a groundwater protection plan may determine that, based on the factors in Section 2(3), the activity does not have the potential to pollute groundwater and that a groundwater protection plan is not required.

Affected by this regulation are those entities that, through their activities, may pollute groundwater and those entities that benefit from prevention of groundwater pollution.

Certain entities must determine if their activities and the substances they use may pollute groundwater. If an entity uses a substance

that may pollute groundwater, the entity must develop and implement a groundwater protection plan, unless exempted. The exact number of entities required to develop and implement groundwater protection plans cannot be determined. The activities for which groundwater protection plans are required, unless exempted, are identified in Section 2(2)(b) and Section 5(5) of this proposed regulation. The cabinet has determined that these activities may have the potential to pollute groundwater. Entities who must develop a groundwater protection plan or determine that they are exempted include those conducting mining, manufacturing, oil and gas production, farming, disposal and land application. Entities that store substances that may pollute groundwater may be affected. There are 3693 manufacturers, 1460 mineral industries, and 92,500 farms in Kentucky. Some of these entities will be required to develop groundwater protection plans, while others will be exempted.

The total number of entities required to develop groundwater protection plans cannot be determined. Because of the increased awareness of the causes of groundwater pollution, the liability associated with pollution of groundwater, and the costs incurred for remediation, many individuals and companies have already voluntarily implemented procedures to prevent groundwater pollution. Different methods have been used to prevent those activities from polluting groundwater. Since many activities that may pollute groundwater are not specifically regulated and each person has implemented different policies and procedures, different levels of effort will be needed to comply with this regulation. Some entities will not need to change their practices, procedures, or facilities. Others will need varying levels of change to prevent groundwater pollution.

(a) Direct and indirect costs or savings to those affected:

1. First year: The first year costs include costs for development of the groundwater protection plans and implementation of the actions identified in the plans to prevent groundwater pollution. The cost of developing a groundwater protection plan is estimated to be from $100 to $10,000.

The exact costs for implementation cannot for all entities be determined in the absence of data on current construction and operating practices. The costs incurred will vary depending on the current and past practices and present policies of each entity. Many individuals and companies have implemented practices and procedures designed to prevent groundwater pollution under existing regulatory programs. Others have, in response to information concerning groundwater remediation costs and liability associated with groundwater pollution, implemented voluntary procedures and practices to prevent groundwater pollution. These practices and procedures are not documented and vary from entity to entity. For each entity costs may be incurred for developing a groundwater pollution plan, installing pollution prevention equipment, developing or altering manufacturing methods to prevent pollution, or developing and implementing training materials to instruct workers in pollution prevention.

The following three scenarios provide cost estimates for implementation of specific groundwater protection plans. They provide estimates of "a least" and "a most" expensive cost for implementation of groundwater protection plans for three types of facilities.

Example 1 includes gasoline stations engaged in storage of gasoline, diesel fuel, and kerosene in underground or above ground tanks; storage of waste materials such as oil, transmission fluid, and solvents; use of floor drains; and, disposal of wastewater. Tables 1 and 2 provide estimated minimum and maximum costs for implementation of a groundwater protection plan for a gasoline station. The costs for an actual gasoline station may be between these two figures.

Table 1. Estimated Minimum Costs for A Gasoline Station

Activity	Assumptions for Cost Calculations	Estimated Costs
Underground tanks for gasoline and diesel fuel	Current underground storage tank regulations are sufficient.	$0
Above ground tank for kerosene	Kerosene tank inside the building.	$0
Storage of waste	Waste oil, transmission fluid, and solvents are stored inside the building and are hauled from the site to be disposed or to be recycled.	$0
Floor drains	Floor drains are connected to a municipal wastewater treatment system.	$0
Wastewater disposal	Restrooms are connected to a municipal wastewater treatment system.	$0
Total Cost		$0

Table 2. Estimated Maximum Cost for A Gasoline Station

Activity	Assumptions for Cost Calculations	Estimated Costs
Underground tank for gasoline and diesel fuel	Because tanks are directly above a public water supply source and the geologic formations are highly permeable, secondary containment is selected as the appropriate pollution prevention practice. Cost estimate is for three tanks.	$9,300

Activity	Assumptions for Cost Calculations	Estimated Costs
Above ground tank for kerosene	Kerosene tank is outside and run-off from site goes to sinkhole. A concrete containment structure to collect spills and a roof to prevent collection of rain are selected for pollution prevention.	$1,300
Storage of waste	A concrete containment structure to collect spills and a roof to prevent collection of rain are selected for pollution prevention in an outside storage area.	$1,300
Floor drains	Floor drain is determined to drain to an underground crevice. Package treatment plant installed.	$4,000
Wastewater disposal	Wastewater also goes to package treatment plant.	$0
Total Cost		$15,900

Example 2 includes oil and gas production facilities engaged in well drilling, operation of oil wells, and storage in impoundments and tanks. Tables 3 and 4 provide estimated minimum and maximum costs for implementation of a groundwater protection plan for an oil and gas production facility. The costs for an oil and gas production facility may be between these two figures.

Table 3. Estimated Minimum Costs for Oil and Gas Production Facility

Activity	Assumptions for Cost Calculations	Estimated Costs
Operation of producing well	1 well, low production, no brine produced, area not hydrogeologically sensitive. Well casing protects groundwater.	$0
Drilling	Shallow drilling, low pressure, no fluids used in drilling, no fluids other than oil found during drilling, area is not hydrogeologically sensitive.	$0
Total Cost		$0

Table 4. Estimated Maximum Costs for Oil and Gas Production Facility

Activity	Assumptions for Cost Calculations	Estimated Costs
Operation of producing well	Numerous wells, high oil/water production ratio, improper well construction, leaking tank batteries and lines, 1 salt water reinjection well. Based on 10 producing wells: Well rehabilitation (material and labor). Injection well construction. Replacement of tank batteries and lines.	 $24,750 $30,000 $20,000
Drilling	Line pits for drilling fluids. Case off fluid producing zones. Restore dry hole and site restoration.	$960 $4,750 $5,000
Total Cost		$85,460

Example 3 includes agricultural production facilities engaged in many different activities that may affect groundwater quality. Tables 5 and 6 provide estimated minimum and maximum costs for implementation of agricultural groundwater protection plans for agricultural production facilities. The actual costs for agricultural production facilities may be between the two figures and will vary depending on the specific activities.

Table 5. Estimated Minimum Costs for Agricultural Production Facility

Activity	Assumptions for Cost Calculations	Estimated Costs
Management of animal waste	Beef cattle grazing in pasture and fenced out of sinkholes.	$0
Hay Production	Hay is produced from pasture land.	$0
Timber	Timber is allowed to grow without chemical control and is harvested on a periodic basis.	$0
Water Well	Well built according to regulations.	$0
Application of pesticides and fertilizers	None applied.	$0
Tanks	Tanks have been tested and are not leaking.	$0
Total Cost		$0

Table 6. Estimated Maximum Costs for Agricultural Production Facility

Activity	Assumptions for Cost Calculations	Estimated Costs
Management of animal waste.	75 confined dairy animals. Selected practices include stack pad and shallow waste lagoon. Recompacted clays of soil for liner added to lagoon construction costs.	$13,570
Water well	Plug well with broken casing and install new 100 foot well. $250 per cubic yard for concrete.	$1,610
Application of herbicides and pesticides	Provide concrete pad (6' x 6') for chemical storage.	$300
Tanks	Leaking 1,000 gallon petroleum tank in permeable soil. Remove old tank using contractor.	$2,500
Total Cost		$17,980

The 3,693 Kentucky manufacturing facilities are different in size of facility, existing groundwater pollution prevention measures, number of units, and materials used. Manufacturers will exhibit a wide range of costs as a result of this proposed regulation. Therefore, it is inappropriate to reflect costs based on an average or typical facility type. The total costs for each facility will vary significantly with the current practices and the pollution prevention measures selected for each site.

The following example illustrates the lowest expected costs. A small parts assembly industry receives all parts pre-cleaned and ready to assemble. Floor drains and bathrooms are connected to a municipal wastewater treatment plant. There is no painting except for routine building and machinery maintenance painting which takes place in the building. Small, consumer-sized packages of oils, lubricants, and cleaners are used by maintenance personnel. A parts washing station in a maintenance shop is maintained by a solvent recovery service and is a self-contained, recirculating system. No underground or above ground tanks exist.

This facility would meet the criteria for exemption under Section 2(3). A determination of the manufacturing process, the facility design, and a description of maintenance related products, should be sufficient for exemption under Section 2(3). The only costs would be those incurred to make those determinations.

Table 7 gives estimates of unit costs to install different groundwater pollution prevention measures. The combination of those measures used at each site will vary based on site-specific conditions.

Table 7. Estimated Costs for Installation of Measures to Prevent Groundwater Pollution

Measures	Estimated Unit Costs
Containment structure for storage of bulk quantities	$11-$15 per square yard for asphalt; $250 per cubic yard for concrete
Covers for storage areas	$6.50-$7.50 per square foot
Synthetic lagoon liners	$.50-$1.00 per square foot
Clay lagoon liners	$4.00-$10.00 per cubic yard
Leak detection for tanks	$3,000 per tank
Secondary containment for tanks	$200-$4,000 per tank
Spill equipment	$100-$5,000
Training	$15-$20 per hour
Plan development	$100-$10,000
Plug wells or bore holes	$2.50 per cubic yard
Replace damaged well casing or install new casing	$4.25 per foot
Floor drains connection to appropriate systems	$500-$10,000

Mining facilities will exhibit a wide range of costs. As with industry there is no typical facility type. Table 8 gives estimated unit costs to install different groundwater pollution prevention measures. The total costs for each facility will vary significantly with the pollution prevention measures selected for each site.

Table 8. Estimated Costs for Installation of Measures to Prevent Groundwater Pollution

MEASURES	Estimated Unit Costs
Equipment maintenance areas	$11 - $15 per square yard for asphalt; $250 per cubic yard for concrete
Containment structures for materials storage	$11 - $15 per square yard for asphalt; $250 per cubic yard for concrete
Clay liners for slurry impoundments	$5.00 - $10.00 per cubic yard
Secondary containment for tanks	$200 - $4,000 per tank
Replace damaged monitoring well casing	$4.25 per foot
Plug wells or bore holes	$2.50 per cubic yard for concrete; $13.20 per bag bentonite
Training	$15 - $20 per hour
Spill equipment	$100 - $5,000

This proposed regulation pursues a preventative approach to groundwater protection by requiring that groundwater protection plans be developed and implemented by those entities whose activities have the potential to pollute groundwater. If groundwater contamination can be prevented, the future costs of remediation can be avoided.

Entities benefiting from groundwater quality maintenance include the general public, persons using groundwater as an individual drinking water source, public or semipublic water supplies using groundwater, persons using groundwater for irrigation, and industries using groundwater. All of these groups benefit from the ability to use groundwater or surface water under the influence of groundwater without treating the water to remove pollutants.

The most direct beneficiaries of groundwater protection are the 206,523 households in Kentucky using wells for their drinking water supplies and the 490,579 individuals served by public water and semi-public supplies for which groundwater is the source. Because of the rural nature of Kentucky, water wells continue to be an important source of drinking water in many areas. An average of 1,860 private drinking water wells are installed each year. Table 9 lists the number of new private drinking water wells installed in each physiographic region since 1985.

Table 9. Number of New Private Drinking Water Wells Installed Since 1985

Physiographic Regions	Number of Wells Installed
Bluegrass	1,138
Mississippian Plateau	2,895
Eastern Coal Field	7,783
Western Coal Field	874
Ohio River Alluvium	761
Total	14,906

Table 10 shows the population using public and semipublic water supplies for which groundwater is the source.

Table 10. Public Water and Semi-public Water Supply Systems Using Groundwater

Physiographic Region	Total Public Systems	Total Population Served
Bluegrass	31	48,866
Mississippian Plateau	84	145,490
Eastern Coal Field	246	52,482
Western Coal Field	11	10,543
Ohio River Alluvium	73	131,195
Jackson Purchase	57	102,003
Totals	502	490,579

The 135 industrial facilities that have water withdrawal permits for over 10,000 gallons of groundwater per day would benefit from maintaining groundwater quality. The number of industries with groundwater withdrawals under 10,000 gallons per day is not available, however, these entities would also benefit from maintaining groundwater quality.

In estimating benefits from avoiding groundwater pollution, actual costs of remediation (e.g., site characterization, capital, etc.) can be estimated. More difficulty, however, is encountered in quantifying the intrinsic value individuals place on natural resources.

The Office of Technology Assessment estimates that the cost of cleaning up federal superfund sites ranges from $5 to $10 million. For 13 state uncontrolled sites to be remediated in the next year, the estimated cost of remediation ranges from $20,000 to $1.8 million.

The Kentucky Underground Storage Tank Commission documents that cleanups of releases range from $8,000 to $325,000 per site. However, for underground storage tank sites with documented groundwater contamination, costs are $180,000 and greater.

Resource economists have developed a significant amount of evidence to support the notion that individuals value groundwater as a commodity to be used as drinking water, for agricultural purposes, and for industrial processes. Furthermore, research has shown that individuals value the option of using groundwater in the future (option values). Groundwater has value as a source of clean water for future generations (bequest values) and, there is a benefit associated with knowing the groundwater is uncontaminated (existence values). These are called intrinsic values.

One technique to quantify intrinsic values individuals place on natural resources, the contingent valuation method, measures individuals' values within the context of a hypothetical market. This is done by determining the maximum amount of income a person is willing to pay for an environmental good (i.e., groundwater quality). Several studies have resulted in different amounts individuals are willing to pay.

One study investigated the willingness of individuals to pay for groundwater protection. Six hundred citizens were asked if they would be willing to pay a certain amount for a groundwater protection plan that would diminish, but not eliminate, the risk of groundwater pollution occurring. 346 citizens responded, and their median value for groundwater protection was $40 per household or $100,000 total for the community. This is considered a conservative estimate given that the more conservative median value was used, and nonrespondents were assumed not to value the groundwater.

According to the 1990 Census, 206,523 households use wells in the Commonwealth. If each were confronted with potential groundwater contamination, and each well was tested for one pesticide and nitrate the average cost would be $189 per well. Testing costs would vary from $6.00 to $2,500 based upon suspected pollutants. The number of tests required and the total number of wells tested will also impact the total cost. An effective groundwater pollution prevention program avoids the costs to test wells, to remediate the pollution, or to provide an alternate water source.

Households seeking to avoid the risks associated with contaminated drinking water may either remove the contaminants from the water or obtain alternative drinking water supplies. Remedial alternatives and their approximate costs (excluding maintenance) are as follows:

Activated Carbon filtration:	Faucet-mounted:	$25-$50
	Under-the-Sink:	$50-$300
	Whole-house:	$500-$800
Distillation:	Countertop:	$300-$350
	Automatic:	$600-$800
Ion Exchange:	Whole-house:	$500-$800
Reverse-Osmosis:	Single-tap:	$400-$600
New well:		$3.50-$4.50 per inch diameter per foot of depth, plus casing and pump costs.

These totals do not include maintenance costs. The typical cost for replacement carbon filters alone is roughly $200-$350 annually for a whole-house system.

Methods to manage or remediate polluted public drinking water systems include treatment, purchase of uncontaminated water from other suppliers, installation of new wells, and dilution. Costs for modification of treatment processes to remove pollutants vary greatly, depending on extent of pollutants, number of pollutants, and location. Capital equipment costs for a granular activated carbon (GAC) filtering system are estimated to be $1 million for a 1 million gallons a day (MGD) plant and $25 million for 100 MGD plant. Capital costs for reverse osmosis technology is estimated to be $800,00 for a 1 MGD plant and ion exchange is estimated at less than $160,000 per plant. The treatment selected will depend on the contaminant.

Costs incurred by a community in a nearby state were documented during a six-month period in which the citizens were being connected to a public water supply system due to groundwater contamination from perchloroethylene (PCE), a typical groundwater pollutant.

During the six-month period, persons were surveyed regarding their changes in behavior to avoid drinking contaminated water. Over one thousand people responded to the survey. These changes included buying bottled water, hauling water from alternate sources, boiling water, purchasing substitute foods and beverages, and buying home water treatment devices.

The total costs of alternatives were computed per household and annualized. A low cost estimate per household was $252 annually for the households that took steps to avoid exposure to the contaminated water. A high cost estimate per household was $383 annually based on the cheapest practice required to eliminate the contamination; the purchase, installation, and maintenance of a GAC filtration system.

Data exist on remediation costs for two Kentucky public water supply systems using groundwater as a source. One system serving a population of 17,074 was contaminated with gasoline. The cost to install an air stripper was $173,649. The costs to supply bottled water and perform analysis to characterize the pollution were $51,350. Another public system supplied by wells and serving a population of 4,745 was contaminated with trichloroethylene. The continuing annual cost to supply activated carbon for the filter system for one year is $74,324.

Estimates for the costs associated with connecting to a public system will vary depending on distances to water mains and housing density. Also, these estimates do not include the monthly water bills residents must pay after connection. Before being connected, drinking water costs were, essentially, zero. Costs to install water lines to households from existing water treatment plants in Kentucky range from $2,000 to $9,000 per household. If a water treatment plant must be constructed, the cost per household will be significantly higher.

The potential exists for a loss of revenue to municipalities dependent on tourism if groundwater contamination should occur. The case of Hidden River Cave illustrates this loss of revenue. In 1943, Hidden River Cave, a major tourist attraction for Horse Cave, Kentucky was closed due to groundwater contamination of the underground waterway that passed through the cave. The cave was closed for 50 years and is just now reopening.

Recently, over $10 million has been spent on constructing sewer line and treatment facilities in the communities surrounding the cave. The American Cave Conservation Association estimates that the lost revenue could easily have been over $100 million during the 50-year closure of the site. If the revenue at hotels and restaurants were included, the figure would be significantly higher.

Furthermore, the biotic life in the caves has been endangered due to long-term groundwater contamination. Endangered species unique to the caves include blind fish, Kentucky cave shrimp, and freshwater mussels. The river is showing signs of revitalization as some biotic life is returning since the construction of sewer lines and treatment facilities.

In addition to the dollar cost of averting groundwater contamination, there are significant human health effects to consider. Chronic illnesses can result from the long-term ingestion of unsafe drinking water. Increased fear and anxiety can result in a community if individuals perceive the levels of contamination to be serious enough to cause adverse health impacts.

Drinking contaminated water has the potential to cause illness, especially in small children, pregnant women, and the elderly. Nitrates and nitrites which may be present in groundwater as a result of agricultural run-off, faulty septic systems, or application of lawn care products can lead to methemoglobinemia or "blue baby" disease.

Septic tank systems may also contaminate groundwater. The resulting contamination leads to the presence of microorganisms which can cause intestinal waterborne diseases such as salmonellosis, shigellosis, cholera, infectious hepatitis, amebiasis, and giardiasis.

2. Continuing costs or savings: The continuing costs include the costs to update the groundwater protection plan every three years and to implement activities in the plans. If identified in the implementation schedule, the construction of practices requiring large capital investments may increase costs over several years until all provisions of the groundwater protection plan are implemented.

The continued savings to entities which develop and implement groundwater protection plans include the avoided costs for site characterization, remedial action plan development, and implementation of corrective action measures to correct groundwater pollution.

Entities which continue to use groundwater for drinking water sources, recreational purposes, industrial use, and irrigation benefit from a cost savings. Additional cost savings are incurred by entities which use surface water impacted by groundwater. These entities realize a cost savings in avoiding the costs to clean up groundwater or surface water.

3. Additional factors increasing or decreasing costs:
There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Each groundwater protection plan must be maintained for six years.

This proposed regulation requires that a copy of an entity's groundwater protection plan be submitted to the cabinet upon request. The cabinet will review approximately 40 plans each year. All generic groundwater protection plans must be submitted to the cabinet.

A copy of the groundwater protection plan must be provided to the purchasers of a facility for which a groundwater protection plan is required and copies must be provided for review by the public at specified locations upon request.

(2) Effects on the promulgating administrative body: The cabinet will be required to develop two generic groundwater protection plans and to review agricultural and any other generic groundwater protection plans developed by entities other than the cabinet. With current staff, the cabinet can also review a maximum of 40 site-specific groundwater protection plans per year. Additional 15 plans could be reviewed per year with the addition of another position costing $43,000 per year including fringe and overhead.

(a) Direct and indirect costs or savings:

1. First year: The cabinet will incur costs to develop two generic groundwater protection plans and to review other generic plans submitted to the cabinet. The costs to develop the generic groundwater protection plans include personnel time to research and develop

the plan, travel costs to visit sites within Kentucky, and administrative costs to produce and distribute the plan. It will require one person year to develop two generic groundwater protection plans. Cost to review 15 groundwater protection plans per year is estimated at one person year or $48,000 including fringe and overhead.

2. Continuing costs or savings: The cabinet will eventually experience a decrease in cost since review of groundwater remediation plans will be reduced. However, review of groundwater protection plans will be a new and continued cost.

3. Additional factors increasing or decreasing costs: There are no additional costs.

(b) Reporting and paperwork requirements: The cabinet must review and provide comments up both generic and site-specific groundwater protection plans. Correspondence must be written to request that groundwater protection plans be submitted to the cabinet and to provide comments on plan reviews and approvals.

(3) Assessment of anticipated effects on state and local revenues: There are no anticipated effects on state or local revenues.

(4) Assessment of alternative methods: Reasons why alternatives were rejected: This proposed regulation was developed with a consensus group of persons representing the public and the regulated community working with the cabinet. The consensus group agreed that groundwater regulations should be proactive rather that reactive. Proactive groundwater regulations should focus on the prevention of pollution of groundwater rather than on the remediation of groundwater that is already polluted. Reasons for the proactive approach are that groundwater remediation costs are much greater than pollution prevention costs, groundwater pollution may not be able to be remediated, several existing programs manage groundwater pollution remediation, and existing regulatory programs do not comprehensively prevent groundwater pollution.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation does not conflict, overlap, or duplicate any statute, administrative regulation or government policy. If entities are affected by another statute or regulation with requirements for groundwater protection, those requirements maybe incorporated into the groundwater protection plan.

(a) Necessity of proposed regulation if in conflict. There are no conflicts, overlaps, or duplications.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions? There are no conflicts, overlaps, or duplications.

(6) Any additional information or comments: There are no additional comments or information.

Tiering: Was tiering applied? Yes. Tiering was applied since the regulation allows a demonstration that some activities do not require the development of a groundwater protection plan. Also, entities select only those preventative measures which are applicable to that entity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation is in response to KRS Chapter 224. There is no federal mandate. However the U.S. Environmental Protection Agency is providing funding for states to develop and implement comprehensive state groundwater protection programs with pollution prevention as the primary objective.

2. State compliance standards. There is no federal mandate.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

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. Local governments that engage in activities listed in Section 2(2)(b) and not excluded under Section 2(3) or (4) of the regulation must develop groundwater protection plans.

2. State what unit, part or division of local government this administrative regulation will affect. Any portion of local, city and county government which engages in activities listed in Section 2(2)(b) and not excluded by Section 2(3) or (4) of the proposed regulation will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation requires the development of groundwater protection plans for the following examples of activities under the jurisdiction of local governments:

Application of fertilizers or pesticides for public right-of-way maintenance or institutional lawn care.

Storage in bulk quantities or in drums of recycling materials, road aggregates, paint, automotive fluids, or chemicals used for water or wastewater treatment.

Storage and related handling of road oils or de-icing materials used on roads, parks and runways.

The transfer in bulk quantities of various materials such as road aggregates, paint, automotive fluids, or chemical used for water or wastewater treatment.

Secondary containment for tanks.

Spill equipment.

Plugging of wells or boreholes.

Floor drains.

Impoundments of sludge in lagoons.

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. County, city, or other local governments are not expected to receive any new revenues as a result of this new regulation. First year expenditures for county, city, or other local governments will vary from entity to entity, depending upon the services each entity provides and the current level of groundwater protection associated with each service. The 120 county governments and numerous city governments will be required to develop groundwater protection plans for the services which impact groundwater, and then implement the plans to prevent groundwater pollution. For example, the 120 county governments and at least 120 city governments which provide some form of highway maintenance and repair will develop and implement groundwater protection plans for the storage and application of their fertilizers, herbicide, or de-icing materials and bulk quantities of pollutants or other materials. Also, of the 859 water treatment plants and 250 wastewater treatment plants in Kentucky, most are owned by local governments and involve the storage of bulk quantities of pollutants. Those local governments will develop and implement groundwater protection plans for those services.

Revenues (+/-): None

Expenditures (+/-): Plan preparations are estimated to be from $1,000 to $10,000 for each local governmental unit, depending on the complexity of the services each provides. Examples of costs that may be incurred to implement the groundwater protection measures are given below. The cost is incurred only if that service applies to the particular governmental unit.

Table 1. Estimated Costs for Installation of Measures to Prevent Groundwater Pollution

Measures	Estimated Unit Costs
Containment structure for storage of bulk quantities	$11-15 per square yard for asphalt; $250 per cubic yard for concrete
Covers for storage areas	$6.50-7.50 per square foot
Synthetic lagoon liners	$.50-$1.00 per square foot
Clay lagoon liners	$4.00-$10.00 per cubic yard
Leak detection for tanks	$3,000 per tank
Secondary containment for tanks	$200-$4,000 per tank
Spill equipment	$100-$5,000
Training	$15-$20 per hour
Plan development	$100-$10,000
Plug wells or boreholes	$2.50 per cubic yard
Replace damaged well casing or install new casing	$4.25 per foot
Floor drains connection to appropriate systems	$500-$10,000
If requested, cost to send copy of plan to cabinet.	$10.00

Other explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 50:034. Permit application form.

RELATES TO: KRS 13A.110, 224.10-100, 224.20-110, 401 KAR 50:035, 40 CFR Part 70, 42 USC 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110

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 administrative regulation provides for the incorporation by reference of the permit application form required for use by regulated entities, pursuant to 401 KAR 50:035, in applying for the issuance, modification, or renewal of permits.

Section 1. Definitions. Terms used in this administrative regulation shall have the meaning given them in 401 KAR 50:010.

Section 2. The following form, which consists of a cover sheet, a general information sheet, and twenty-four (24) subparts, shall be required to apply for a permit to construct or operate an air contaminant source and is incorporated herein by reference:

(1) Form DEP7007, Permit Application to Construct or Operate an Air Contaminant Source.

(a) DEP7007A Indirect Heat Exchanger.
(b) DEP7007B Manufacturing or Processing Operations.
(c) DEP7007C Incinerators and/or Waste Burners.
(d) DEP7007E Monitoring Equipment.
(e) DEP7007F Episode Standby Plan.
(f) DEP7007G Compliance Schedules.
(g) DEP7007J Volatile Liquid Storage.
(h) DEP7007K Surface Coating (or) Printing Operations.
(i) DEP7007L Concrete, Asphalt, Aggregate, Coal, Feed, Flour, and Grain.
(j) DEP7007M Metal Cleaning Degreasers.
(k) DEP7007N Stack Parameters and Air Pollution Control Equipment.
(l) DEP7007P Perchlorethylene Dry Cleaning Systems.
(m) DEP7007R Emission Reduction Credits.
(n) DEP7007S Service Stations.
(o) DEP7007T Metal Plating and Surface Treatment Operations.
(p) DEP7007U Administrative Information.
(q) DEP7007V Applicable Requirements.
(r) DEP7007W Emissions Comparison.
(s) DEP7007X Compliance Monitoring Devices and Activities.
(t) DEP7007Y Good Engineering Practice (GEP) Stack Height Determination.
(u) DEP7007Z Compliance Status.
(v) DEP7007AA Compliance Schedule for Noncomplying Emission Units.
(w) DEP7007BB Certified Progress Report.
(x) DEP7007CC Compliance Certification.

Section 3. Copies of the form incorporated by reference in Section 2 of this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices of the Division for Air Quality:

(1) Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky,

40601, (502) 564-3382;

(2) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky, 41105-1507, (606) 325-8569;

(3) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(4) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(5) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(6) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304;

(7) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: August 12, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on September 21, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation incorporates by reference the form required for an air contaminant source to apply for a permit to construct and operate in the Commonwealth of Kentucky. All sources in Kentucky subject to 401 KAR 50:035 will be required to apply for a permit application using this form.

(a) Direct and indirect costs or savings to those affected:

1. First year: While compiling and submitting the additional information required in this form may result in an additional expense to sources, failure to require the additional information would result in the U.S. EPA's disapproval of Kentucky's Title V Program. If the state's Title V Program was disapproved, sources would be required to submit the information directly to the U.S. EPA rather than to the cabinet. The cabinet expects the additional cost to be marginal for most sources. The costs may be somewhat higher for larger sources who will require very complex permit applications. For sources who construct, reconstruct, or modify after the effective date of this administrative regulation, there will be a savings in that only one application will need to be submitted for a source to construct and operate.

2. Continuing costs or savings: After the initial round of permits issued pursuant to the proposed amendment to 401 KAR 50:035, sources will be required to renew their permits every five (5) years using the form incorporated by reference in this administrative regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): There are no known additional factors involved in increasing or decreasing costs.

(b) Reporting and paperwork requirements: The information sheet and form subparts DEP7007A through DEP7007T are currently in use. The remaining form subparts are being added to comply with the requirements of 42 USC 7651-7651o (Title V of the Clean Air Act Amendments of 1990).

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Since the timely issuance of permits remains an important goal of the cabinet, the use of this more complex form will demand additional personnel in the Permit Review Branch of the Division for Air Quality.

2. Continuing costs or savings: Sources will be required to use this form to renew or amend existing permits.

3. Additional factors increasing or decreasing costs: There are no known additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Except for the use of this form there are no additional reporting and paperwork required by this administrative regulation.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet could have proposed that permit applications continue to be submitted as separate forms for construction and operating permits. It was determined, however, that the permit application form which is incorporated by reference in this administrative regulation would result in lower costs to the affected sources and to the cabinet.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: This administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation in order to incorporate by reference the permit application forms required for use by all regulated entities.

TIERING: Was tiering applied? Yes. Tiering is applicable to this administrative regulation because the number of pages on the form to be completed is dependent on the complexity of the source.

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

2. State what unit, part or division of local government this administrative regulation will affect. Any unit, part or division of local government required to be permitted pursuant to 401 KAR 50:035 would be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. Any unit, part or division of local government required to be permitted, pursuant to 401 KAR 50:035, will be required to submit their application on the form incorporated by reference in this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact on the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Clean Air Act Amendments of 1990 mandate that the Commonwealth of Kentucky apply for authorization to implement an operating permit program in Kentucky meeting the requirements of Title V of the amendments (42 USC 76061-7661f). The application for authorization must include the permit form incorporated by reference in this administrative regulation.

2. State compliance standards. The state compliance standards are contained in 401 KAR 50:035 and KRS 13A.110.

3. Minimum or uniform standards contained in the federal mandate. All sources that will be subject to the provisions of the proposed amended regulation, 401 KAR 50:035, Permits, will be subject to the provisions of this administrative regulation which incorporates by reference the required permit application form.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 50:038. Title V emissions fee.

RELATES TO: KRS 224.10-100, 224.10-230, 224.20-050(10), 224.20-100, 224.20-130, 40 CFR Part 70, 42 USC 7401-7671q, et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-230, 224.20-050(10)

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 administrative regulation provides for the assessment of fees necessary to fund the state operating permit program required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations promulgated by the U.S. EPA at 40 CFR Part 70, as published in the Federal Register, 57 FR 32250, on July 21, 1992.

Section 1. Definitions. As used in this administrative regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Act," "Clean Air Act," or "CAA" means 42 USC 7401 through 7671q.

(2) "Actual emissions" means the amount of a pollutant actually emitted in the calendar year immediately preceding the fiscal year during which an emissions fee is assessed, as recorded by the Kentucky Emissions Inventory System (KyEIS).

(3) "Designated representative" means a responsible person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program.

(4) "Emissions fee" means the amount of money assessed by the cabinet to recover the cost of administering the operating permit program.

(5) "Fiscal year" means the period beginning July 1 and ending the following June 30.

(6) "Hazardous air pollutant" means a pollutant listed in 401 KAR 57:061.

(7) "Kentucky emissions inventory system" means a database used by the cabinet to record, among other information, emissions of air pollutants from Kentucky sources.

(8) "Operating permit program" means the state operating permit program required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations promulgated by the U.S. EPA at 40 CFR Part 70, as published in the Federal Register, 57 FR 32250, on July 21, 1992. This includes but is not limited to the review of permit applications and exemptions; the issuance of permits to air pollution sources; inspections of air pollution sources; enforcement activities other than prosecutions in a court of law or administrative hearing; air quality and emissions monitoring, including quality assurance; the preparation of reports, plans, regulations, and statutes; responses to inquiries; preparing inventories and tracking emissions; the preparation and maintenance of records, including computerized data bases; air quality modeling, analyses, and demonstrations; and providing direct and indirect support through a small business technical assistance program. The operating permit program does not mean activities directly related to the control of asbestos emissions from renovations or demolitions, the Asbestos Hazard Emergency Response Act, or costs directly related to vehicle inspection and maintenance.

(9) "Responsible official" means one (1) of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For affected sources, the designated representative.

(10) "Subject emissions" means actual emissions, as recorded in the Kentucky emissions inventory system, of sulfur dioxide, oxides of nitrogen, PM_{10}, lead, volatile organic compounds, hazardous air pollutants listed in 401 KAR 57:061, a pollutant subject to a standard contained in Section 111 of the Act, or ethyl alcohol, from an air pollution source subject to this administrative regulation, except that actual emissions in excess of 4,000 tons of a single pollutant from a source shall not be subject emissions. Pollutants subject only to Section 112(r) of 42 USC 7401 through 7671q, and pollutants that are class I or class II substances under 42 USC 7671 through 7671q and which are not otherwise regulated shall not be subject emissions.

Section 2. Applicability. (1) This administrative regulation shall apply to each air pollution source required to have a permit issued by the cabinet which emitted:

(a) Twenty-five (25) tons per year or more of sulfur dioxide, oxides of nitrogen, PM_{10}, volatile organic compounds, a pollutant subject to a standard contained in Section 111 of the Act, or ethyl

alcohol, or any combination of these pollutants totalling twenty-five (25) tons per year; or

(b) Two (2) tons per year of a single hazardous air pollutant or five (5) tons per year of any combination of hazardous air pollutants.

(2) This administrative regulation shall not apply to mobile sources, or sources located in an air pollution control district granted concurrent jurisdiction by the cabinet under KRS 224.20-130. Additionally, this administrative regulation shall not apply to an electric utility unit exempted from this fee by 42 USC 7651g, or to any substitute unit, approved by the Administrator of the U.S. EPA, pursuant to 42 USC 7651c.

Section 3. Fee Assessment. (1) On or about July 1, 1994, and on or about July 1 of each succeeding year, the division for air quality shall calculate and assess an annual emissions fee based on subject emissions for each air pollution source subject to this administrative regulation and shall provide written notification to the source of the amount of fee due.

(2) Determining subject emissions. At least four (4) months but not more than twelve (12) months prior to assessing the emissions fee, the cabinet shall provide each source subject to the emissions fee a written copy of the KyEIS containing the most recent information appropriate to that source. Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its subject emissions. The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information. Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the subject emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.

(3) Fee assessment. At least sixty (60) days prior to assessing the fee, the cabinet shall determine the subject emissions for each source, based on the information provided by the source and on other information available to the cabinet. The cabinet shall notify the source of its determination for subject emissions at least forty-five (45) days prior to assessing the fee. Assessment of the subject emissions shall be a final determination by the cabinet. If the source fails to notify the cabinet of an error in the determination of subject emissions within thirty (30) days after the date the determination is mailed by the cabinet, the source shall be assessed a fee based on the cabinet's determination.

(4) Computation of emissions fee. The cabinet shall compute the emissions fee as follows:

(a) For fiscal year 1995 the emissions fee shall be the amount of money approved by the U.S. EPA as adequate to administer the operating permit program and authorized by the Kentucky General Assembly for that purpose. The cost per ton of the subject emissions shall be the emissions fee divided by the total number of tons of subject emissions from all sources subject to this administrative regulation.

(b) Except as provided in paragraph (c) of this subsection, the emissions fee for each succeeding fiscal year shall be determined pursuant to 40 CFR 70.9(b)(2)(iv). The cost per ton of subject emissions shall be determined as prescribed in paragraph (a) of this administrative regulation.

(c) Notwithstanding the provisions of paragraph (b) of this subsection the emissions fee for a fiscal year may be increased by an amount greater than that calculated pursuant to 40 CFR 70.9(b)(2)(iv), may be left unchanged from the previous fiscal year, or may be decreased from the previous fiscal year if the cabinet determines after public hearing and after approval by the U.S. EPA that the increase is necessary, or the same or lesser amount is adequate, to cover all reasonable costs of administering the operating permit program.

(5) Payment of fees. A source subject to this administrative regulation shall pay a portion of the emissions fee which shall be determined by multiplying the subject emissions from the source, expressed in tons to the nearest ton, by the cost per ton of subject emissions. A source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the cabinet mails to the source the written notification of the amount of fee due.

(6) Enforcement.

(a) Each day after the deadline for payment of the source's portion of the emissions fee during which the source fails to pay the fee shall be a separate violation of this administrative regulation.

(b) Failure to pay the fee within ninety (90) days after the date on which the cabinet notifies the source of the amount of fee due shall result in:

1. An increase in the fee of an additional fifty (50) percent of the original amount due, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of federal taxes); and

2. Suspension of the source's permit to operate until the fee is paid or until the cabinet has approved a schedule of payment.

Section 5. Use of Fees. All fees collected pursuant to this administrative regulation shall be deposited in a trust and agency account and shall be used solely for funding the operating permit program.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on September 21, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1)Type and number of entities affected: This administrative regulation shall affect all sources emitting twenty-five tons or more per year of sulfur dioxide, oxides of nitrogen, particulate matter (measured as PM_{10}), or volatile organic compounds, or any combination of those pollutants, and all sources emitting two tons per year or more of a hazardous air pollutant, or five tons per year or more of any combination of hazardous air pollutants, listed in 401 KAR 57:061. The Division for Air Quality anticipates that approximately 400 air pollution sources will be required to pay an emissions fee by this administrative regulation.

(a) Direct and indirect costs or savings to those affected: This administrative regulation will cause nearly the entire cost of issuing and enforcing permits required under federal regulations to be paid by the affected sources. Collection and use of emissions fees to pay those costs are mandated by Title V of the Clean Air Act Amendments of 1990. Final determination of the fee must await calculation of the 1995 and 1996 emissions from affected sources, and for the

expenditure authorizations from the Kentucky General Assembly. However, the following preliminary estimates are offered:

1. First and second year: The Division for Air Quality presently estimates that $6,619,000 will need to be collected for 1995, and $6,714,000 will need to be collected for 1996. Assuming 213,000 of subject emissions, these amounts would result in fees of approximately $31.08 and $31.52 per ton for 1995 and 1996, respectively. Costs per ton in those ranges could result in annual fees of more than $400,000 to Kentucky's highest emitting sources. The smallest sources expected to be affected by this regulation could pay a fee as little as $62. This estimate assumes that certain activities of the Division for Air Quality are excluded from Title V requirements, including some permitting activities. If the U.S. EPA disagrees with some of those exemptions, the cost could increase to approximately $35 per ton in 1995, and to approximately $35.70 in 1996. Presently, sources of sulfur dioxide, oxides of nitrogen, particulate matter (measured as PM_{10}), and volatile organic compounds pay an emissions fee to the Division for Air Quality of $12.21 per ton.

2. Continuing costs or savings: The costs created by this administrative regulation are continuing, annual costs. The Clean Air Act Amendments of 1990 require that fees for future years be increased in an amount consistent with increases in the consumer price index.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): There are no known additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The majority of sources subject to this proposed administrative regulation already are required to pay an annual emissions fee to the Division for Air Quality. For those sources, there will be no increase in reporting and paperwork requirements generated by this proposed regulation. Some sources which do not emit those pollutants in sufficient quantities to be subject to the present emissions fee requirements may become subject to the requirements of this proposed administrative regulation because they emit hazardous air pollutants. Those sources will be required to respond to requests for emissions information and to requests for the payment of fees. Even for those sources, the reporting and paperwork requirements should not be significantly different from those contained in other air quality regulations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division for Air Quality does not anticipate any significant costs or savings from this proposed administrative regulation.

2. Continuing costs or savings: The Division for Air quality does not anticipate any significant costs or savings from this proposed administrative regulation.

3. Additional factors increasing or decreasing costs: There are no known additional factors which will increase or decrease costs.

(b) Reporting and paperwork requirements: Because of its interim fee program, the Division for Air Quality already has established a mechanism for assessing emissions subject to the fee, a billing system, and an accounting system for the fee program. The Natural Resources and Environmental Protection Cabinet, including the Division for Air Quality, also use time coding to identify work directed toward specific projects or tasks. Some additional effort will be required to add and use time codes and auditing systems ensuring that no source of funding other than emissions fees is used to support the Title V permitting program, and that no emissions fees collected to pay Title V permitting program expenses are used for any other purpose. The Division for Air Quality does not anticipate that these additional efforts will cause a significant hardship.

(3) Assessment of anticipated effect on state and local revenues: Presently, the Division for Air Quality expects this proposed administrative regulation to generate approximately $13,333,000 during the 1994-96 biennium. While this money must be earmarked for Title V permitting expenses, state general fund money presently directed to those activities will become available for other purposes. During 1993-94, the Division for Air Quality is authorized to receive $5,381,800 from state general funds. The division anticipates that adoption of this proposed administrative regulation will allow approximately $2,961,000 of state general fund money to be redirected during the coming biennium. The division also expects to lose approximately $1,000,000 each year in federal grant money (the division currently receives approximately $2,000,000 in federal grant money per year). There is no anticipated effect on local government revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Title V of the Clean Air Act Amendments of 1990 establish the requirements for a federal operating permit program for air pollution sources. That program can be delegated to state and local agencies provided all requirements are met. One of the requirements is that the program must be supported by emissions fees. Failure by the Commonwealth of Kentucky to collect and use emissions fees to support the operating permit program would cause the U.S. EPA to reject Kentucky's request for delegation and to require air pollution sources in Kentucky to apply for and receive federal operating permits. Kentucky sources then would be required to pay an emissions fee established by and paid to the U.S. EPA. For those reasons, no alternative was considered.

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

(6) Any additional information or comments: The cabinet has no additional information or comments.

TIERING: Was tiering applied? Yes. This administrative regulation charges a fixed amount for each ton of air pollution emitted. Therefore, the largest emitting sources must pay the largest fee.

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will require a local government to pay a fee appropriate to the emissions from any air pollution source subject to this administrative regulation operated by the local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the operation of boilers, indirect heat exchangers, and other sources of air pollution. If such sources are operated by a unit of local government, that local government could be affected by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact on the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): Local governments operating an air pollution source will be subject to a fee of approximately thirty-one dollars per ton of air pollution emitted.

Other Explanation: There is no additional explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is contained in 42 USC 7401-7671q (the Clean Air Act, or CAA), as amended by PL 101-459, November 15, 1990. 42 USC 7661-7661f (Title V of the Clean Air Act Amendments) contains the specific requirements for a federally enforceable operating permit program. The final rules establishing the require-

ments for an approvable state operating permit program were published in the Federal Register, July 21, 1992 (57 FR 32295).

2. State compliance standards. KRS 13A.

3. Minimum or uniform standards contained in the federal mandate. In 1990, Congress amended the CAA to require that many sources of air pollution apply for and receive federal operating permits. According to the CAA, the operating permit program is to be supported in its entirety by fees collected from the sources. That is, the CAA forbids the use of other funds (e.g., general revenues) to support what has come to be called the Title V Operating Permit Program. The CAA also provides that states may be delegated the Title V Operating Permit Program by adopting rules consistent with its requirements, including the fee requirements. Absent such delegation to Kentucky, air pollution sources in the Commonwealth would be required to seek operating permits from, and pay fees to, the U.S. EPA.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The Natural Resources and Environmental Protection Cabinet must apply for delegation of the Title V Operating Permit Program by November 15, 1993. The application must include an assessment of the costs of conducting that program during each of its first four years. That assessment will be provided both to the U.S. EPA and to the Kentucky General Assembly as part of the cabinet's 1995-1996 biennial budget request. Once approved, the cost for each year will be divided by the total number of tons of emissions of air pollutants subject to the Title V Operating Permit Program to determine a cost per ton of emissions. Each source subject to the program then will be required to pay a fee equal to the total number of tons of pollution it emits multiplied by the cost per ton. These requirements are entirely consistent with those of the CAA.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards, or additional or different responsibilities or requirements imposed by the administrative regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 57:061. Hazardous air pollutants and source categories.

RELATES TO: KRS 224.10-100, 224.20-110, 40 CFR Part 70, 42 USC 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides the list of hazardous air pollutants pursuant to 42 USC 7412(b) (Section 112(b) of the Act) and the list of source categories and subcategories, as published in the Federal Register, 57 FR 31591, July 16, 1992.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given to them in 401 KAR 57:005.

(1) "Act" means the Clean Air Act promulgated at 42 USC 7401-7671q, as amended by PL 101-549, November 15, 1990.

(2) "Area source" means a stationary source of hazardous air pollutants that is not a major source.

(3) "Hazardous air pollutant" means a substance listed in Section 2 of this administrative regulation.

(4) "Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants, or a lesser quantity which the cabinet may establish on the basis of the potency, persistence, potential for bioaccumulation, or other characteristics or relevant factors pertaining to the pollutant.

(5) "Stationary source" means a building, structure, facility, or installation which emits or may emit an air pollutant.

Section 2. List of Hazardous Air Pollutants. The following chemicals are hazardous air pollutants as listed in 42 USC 7412(b) (Section 112(b) of the Act):

CAS number - Chemical name

(1) 75070 - Acetaldehyde
(2) 60355 - Acetamide
(3) 75058 - Acetonitrile
(4) 98862 - Acetophenone
(5) 53963 -Acetylaminofluorene
(6) 107028 - Acrolein
(7) 79061 - Acrylamide
(8) 79107 - Acrylic acid
(9) 107131 - Acrylonitrile
(10) 107051 - Allyl chloride
(11) 92671 - 4-Aminobiphenyl
(12) 62533 - Aniline
(13) 90040 - o-Anisidine
(14) 1332214 - Asbestos
(15) 71432 - Benzene (including benzene from gasoline)
(16) 92875 - Benzidine
(17) 98077 - Benzotrichloride
(18) 100447 - Benzyl chloride
(19) 92524 - Biphenyl
(20) 117817 - Bis(2-ethylhexyl)phthalate (DEHP)
(21) 542881 - Bis(chloromethyl)ether
(22) 75252 - Bromoform
(23) 106990 - 1,3-Butadiene
(24) 156627 - Calcium cyanamide
(25) 105602 - Caprolactam
(26) 133062 - Captan
(27) 63252 - Carbaryl
(28) 75150 - Carbon disulfide
(29) 56235 - Carbon tetrachloride
(30) 463581 - Carbonyl sulfide
(31) 120809 - Catechol
(32) 133904 - Chloramben
(33) 57749 - Chlordane
(34) 7782505 - Chlorine
(35) 79118 - Chloroacetic acid
(36) 532274 - 2-Chloroacetophenone
(37) 108907 - Chlorobenzene
(38) 510156 - Chlorobenzilate
(39) 67663 - Chloroform
(40) 107302 - Chloromethyl methyl ether
(41) 126998 - Chloroprene
(42) 1319773 - Cresols/Cresylic acid (isomers and mixture)
(43) 95487 - o-Cresol
(44) 108394 - m-Cresol
(45) 106445 - p-Cresol
(46) 98828 - Cumene
(47) 94757 - 2,4-D, salts and esters
(48) 3547044 - DDE
(49) 334883 - Diazomethane
(50) 132649 - Dibenzofurans
(51) 96128 - 1,2-Dibromo-3-chloropropane

(52) 84742 - Dibutylphthalate
(53) 106467 - 1,4-Dichlorobenzene(p)
(54) 91941 - 3,3-Dichlorobenzidene
(55) 111444 - Dichloroethyl ether (Bis(2-chloroethyl)ether)
(56) 542756 - 1,3-Dichloropropene
(57) 62737 - Dichlorvos
(58) 111422 - Diethanolamine
(59) 121697 - N,N-Diethyl aniline (N,N-Dimethylaniline)
(60) 64675 - Diethyl sulfate
(61) 119904 - 3,3-Dimethoxybenzidine
(62) 60117 - Dimethyl aminoazobenzene
(63) 119937 - 3,3'-Dimethyl benzidine
(64) 79447 - Dimethyl carbamoyl chloride
(65) 68122 - Dimethyl formamide
(66) 57147 - 1,1-Dimethyl hydrazine
(67) 131113 - Dimethyl phthalate
(68) 77781 - Dimethyl sulfate
(69) 534521 - 4,6-Dinitro-o-cresol, and salts
(70) 51285 - 2,4-Dinitrophenol
(71) 121142 - 2,4-Dinitrotoluene
(72) 123911 - 1,4-Dioxane (1,4-Diethyleneoxide)
(73) 122667 - 1,2-Diphenylhydrazine
(74) 106898 - Epichlorohydrin (1-Chloro-2,3-epoxypropane)
(75) 106887 - 1,2-epoxybutane
(76) 140885 - Ethyl acrylate
(77) 100414 - Ethyl benzene
(78) 51796 - Ethyl carbamate (Urethane)
(79) 75003 - Ethyl chloride (Chloroethane)
(80) 106934 - Ethylene dibromide (Dibromoethane)
(81) 107062 - Ethylene dichloride (1,2-Dichloroethane)
(82) 107211 - Ethylene glycol
(83) 151564 - Ethylene imine (Aziridine)
(84) 75218 - Ethylene oxide
(85) 96457 - Ethylene thiourea
(86) 75343 - Ethylidene dichloride (1,1-Dichloroethane)
(87) 50000 - Formaldehyde
(88) 76448 - Heptachlor
(89) 118741 - Hexachlorobenzene
(90) 87683 - Hexachlorobutadiene
(91) 77474 - Hexachlorocyclopentadiene
(92) 67721 - Hexachloroethane
(93) 822060 - Hexamethylene-1,6-diisocyanate
(94) 680319 - Hexamethylphosphoramide
(95) 110543 - Hexane
(96) 302012 - Hydrazine
(97) 7647010 - Hydrochloric acid
(98) 7664393 - Hydrogen fluoride (Hydrofluoric acid)
(99) 7783064 - Hydrogen sulfide
(100) 123319 - Hydroquinone
(101) 78591 - Isophorone
(102) 58899 - Lindane (all isomers)
(103) 108316 - Maleic anhydride
(104) 67561 - Methanol
(105) 72435 - Methoxychlor
(106) 74839 - Methyl bromide (Bromomethane)
(107) 74873 - Methyl chloride (Chloromethane)
(108) 71556 - Methyl chloroform (1,1,1-Trichloroethane)
(109) 78933 - Methyl ethyl ketone (2-Butanone)
(110) 60344 - Methyl hydrazine
(111) 74884 - Methyl iodide (Iodomethane)
(112) 108101 - Methyl isobutyl ketone (Hexone)
(113) 624839 - Methyl isocyanate
(114) 80626 - Methyl methacrylate
(115) 1634044 - Methyl tert butyl ether
(116) 101144 - 4,4-Methylene bis(2-chloroaniline)
(117) 75092 - Methylene chloride (Dichloromethane)
(118) 101688 - Methylene diphenyl diisocyanate (MDI)
(119) 101779 - 4,4'-Methylenedianiline
(120) 91203 - Naphthalene
(121) 98953 - Nitrobenzene
(122) 92933 - 4-Nitrobiphenyl
(123) 100027 - 4-Nitrophenol
(124) 79469 - 2-Nitropropane
(125) 684935 - N-Nitroso-N-methylurea
(126) 62759 - N-Nitrosodimethylamine
(127) 59892 - N-Nitrosomorpholine
(128) 56382 - Parathion
(129) 82688 - Pentachloronitrobenzene (Quintobenzene)
(130) 87865 - Pentachlorophenol
(131) 108952 - Phenol
(132) 106503 - p-Phenylenediamine
(133) 75445 - Phosgene
(134) 7803512 - Phosphine
(135) 7723140 - Phosphorus
(136) 85449 - Phthalic anhydride
(137) 1336363 - Polychlorinated biphenyls (Arochlors)
(138) 1120714 - 1,3-Propane sultone
(139) 57578 - beta-Propiolactone
(140) 123386 - Propionaldehyde
(141) 114261 - Propoxur (Baygon)
(142) 78875 - Propylene dichloride (1,2-Dichloropropane)
(143) 75569 - Propylene oxide
(144) 75558 - 1,2-Propylenimine (2-Methyl aziridine)
(145) 91225 - Quinoline
(146) 106514 - Quinone
(147) 100425 - Styrene
(148) 96093 - Styrene oxide
(149) 1746016 - 2,3,7,8-Tetrachlorodibenzo-p-dioxin
(150) 79345 - 1,1,2,2-Tetrachloroethane
(151) 127184 - Tetrachloroethylene (Perchloroethylene)
(152) 7550450 - Titanium tetrachloride
(153) 108883 - Toluene
(154) 95807 - 2,4-Toluene diamine
(155) 584849 - 2,4-Toluene diisocyanate
(156) 95534 - o-Toluidine
(157) 8001352 - Toxaphene (chlorinated camphene)
(158) 120821 - 1,2,4-Trichlorobenzene
(159) 79005 - 1,1,2-Trichloroethane
(160) 79016 - Trichloroethylene
(161) 95954 - 2,4,5-Trichlorophenol
(162) 88062 - 2,4,6-Trichlorophenol
(163) 121448 - Triethylamine
(164) 1582098 - Trifluralin
(165) 540841 - 2,2,4-Trimethylpentane
(166) 108054 - Vinyl acetate
(167) 593602 - Vinyl bromide
(168) 75014 - Vinyl chloride
(169) 75354 - Vinylidene chloride (1,1-Dichloroethylene)
(170) 1330207 - Xylenes (isomers and mixture)
(171) 95476 - o-Xylenes
(172) 108383 - m-Xylenes
(173) 106423 - p-Xylenes
(174) 0 - Antimony Compounds
(175) 0 - Arsenic Compounds (inorganic including arsine)
(176) 0 - Beryllium Compounds
(177) 0 - Cadmium Compounds
(178) 0 - Chromium Compounds
(179) 0 - Cobalt Compounds
(180) 0 - Coke Oven Emissions
(181) 0 - Cyanide Compounds
(182) 0 - Glycol ethers
(183) 0 - Lead Compounds
(184) 0 - Manganese Compounds
(185) 0 - Mercury Compounds

(186) 0 - Fine mineral fibers
(187) 0 - Nickel Compounds
(188) 0 - Polycyclic Organic Matter
(189) 0 - Radionuclides (including radon)
(190) 0 - Selenium Compounds

Section 3. List of Categories and Subcategories of Hazardous Air Pollutants. The following are major and area source categories and subcategories as listed in 42 USC 7412(c)(1) and Federal Register 57 FR 31576, July 16, 1992.

(1) For major sources.

(a) Fuel combustion.

1. Engine test facilities;
2. Industrial boilers;
3. Institutional/commercial boilers;
4. Process heaters;
5. Stationary internal combustion engines; and
6. Stationary turbines.

(b) Nonferrous metals processing.

1. Primary aluminum production;
2. Secondary aluminum production;
3. Primary copper smelting;
4. Primary lead smelting;
5. Secondary lead smelting;
6. Lead acid battery manufacturing; and
7. Primary magnesium refining.

(c) Ferrous metals processing.

1. Coke by-product plants;
2. Coke ovens: charging, top side, and door leaks;
3. Coke ovens: pushing, quencing, and battery stacks;
4. Ferroalloys production;
5. Integrated iron and steel manufacturing;
6. Nonstainless steel manufacturing-electric arc furnace (EAF) operation;
7. Stainless steel manufacturing-electric arc furnace (EAF) operation;
8. Iron foundries;
9. Steel foundries; and
10. Steel pickling-hci process.

(d) Mineral products processing.

1. Alumina processing;
2. Asphalt/coal, tar application-metal pipes;
3. Asphalt concrete manufacturing;
4. Asphalt processing;
5. Asphalt roofing manufacturing;
6. Chromium refractories production;
7. Clay products manufacturing;
8. Lime manufacturing;
9. Mineral wool production;
10. Portland cement manufacturing;
11. Taconite iron ore processing; and
12. Wool fiberglass manufacturing.

(e) Petroleum and natural gas production and refining.

1. Oil and natural gas production;
2. Petroleum refineries-catalytic cracking (fluid and other) units, catalytic reforming units, and sulfur plant units; and
3. Petroleum refineries-other sources not distinctly listed.

(f) Liquids distribution.

1. Gasoline distribution (stage i); and
2. Organic liquids distribution (nongasoline).

(g) Surface coating processes.

1. Aerospace industries;
2. Auto and light duty truck (surface coating);
3. Flat wood paneling (surface coating);
4. Large appliance (surface coating);
5. Magnetic tapes (surface coating);
6. Manufacture of paints, coatings, and adhesives;
7. Metal can (surface coating);
8. Metal coil (surface coating);
9. Metal furniture (surface coating);
10. Miscellaneous metal parts and products (surface coating);
11. Paper and other webs (surface coating);
12. Plastic parts and products (surface coating);
13. Printing, coating, and dyeing of fabrics;
14. Printing/publishing (surface coating);
15. Shipbuilding and ship repair (surface coating); and
16. Wood furniture (surface coating).

(h) Waste treatment and disposal.

1. Hazardous waste incineration;
2. Municipal landfills;
3. Sewage sludge incineration;
4. Site remediation;
5. Solid waste treatment, storage and disposal facilities (tsdf); and
6. Publicly owned treatment works (potw) emissions.

(i) Agricultural chemicals production.

1. 2,4-D salts and esters production;
2. 4-Chloro-2- methylphenoxyacetic acid production;
3. 4,6-Dinitro-o-cresol production;
4. Captafol production;
5. Captan production;
6. Chloroneb production;
7. Chlorothalonil production;
8. Dacthal (tm) production;
9. Sodium pentachlorophenate production; and
10. Tordon (tm) acid production.

(j) Fibers production processes.

1. Acrylic fibers/modacrylic fibers production;
2. Rayon production; and
3. Spandex production.

(k) Food and agriculture processes.

1. Baker's yeast manufacturing;
2. Cellulose food casing manufacturing; and
3. Vegetable oil production.

(l) Pharmaceutical production processes: Pharmaceuticals production.

(m) Polymers and resins production.

1. Acetal resins production;
2. Acrylonitrile-butadiene-styrene production;
3. Alkyd resins production;
4. Amino resins production;
5. Boat manufacturing;
6. Butadiene-furfural cotrimer (r-11);
7. Butyl rubber production;
8. Carboxymethylcellulose production;
9. Cellophane production;
10. Cellulose ethers production;
11. Epichlorohydrin elastomers production;
12. Epoxy resins production;
13. Ethylene-propylene elastomers production;
14. Flexible polyurethane foam production;
15. Hypalon (tm) production;
16. Maleic anhydride copolymers production;
17. Methylcellulose production;
18. Methyl methacrylate-acrylonitrile-butadiene-styrene production;
19. Methyl methacrylate-butadiene-styrene terpolymers production;
20. Neoprene production;
21. Nitrile butadiene rubber production;
22. Nonnylon polyamides production;
23. Nylon 6 production;
24. Phenolic resins production;
25. Polybutadiene rubber production;
26. Polycarbonates production;
27. Polyester resins production;

28. Polyethylene teraphthalate production;
29. Polymerized vinylidene chloride production;
30. Polymethyl methacrylate resins production;
31. Polystyrene production;
32. Polysulfide rubber production;
33. Polyvinyl acetate emulsions production;
34. Polyvinyl alcohol production;
35. Polyvinyl butyral production;
36. Polyvinyl chloride and copolymers production;
37. Reinforced plastic composites production;
38. Styrene-acrylonitrile production; and
39. Styrene-butadiene rubber and latex production.

(n) Production of inorganic chemicals.

1. Ammonium sulfate production-captrolactam by-products plants;
2. Antimony oxides manufacturing;
3. Chlorine production;
4. Chromium chemicals manufacturing;
5. Cyanuric chloride production;
6. Fume silica production;
7. Hydrochloric acid production;
8. Hydrogen cyanide production;
9. Hydrogen fluoride production;
10. Phosphate fertilizers production;
11. Phosphoric acid manufacturing;
12. Quaternary ammonium compounds production;
13. Sodium cyanide production; and
14. Uranium hexafluoride production.

(o) Production of organic chemicals: Synthetic organic chemical manufacturing.

(p) Miscellaneous processes.

1. Aerosol can-filling facilities;
2. Benzyltrimethylammonium chloride production;
3. Butadiene dimers production;
4. Carbonyl sulfide production;
5. Chelating agents production;
6. Chlorinated paraffins production;
7. Chromic acid anodizing;
8. Commercial dry cleaning (perchloroethylene)-transfer machines;
9. Commercial sterilization facilities;
10. Decorative chromium electroplating;
11. Dodencanedioic acid production;
12. Dry cleaning (petroleum solvent);
13. Ethylidene norbornene production;
14. Explosives production;
15. Halogenated solvent cleaners;
16. Hard chromium electroplating;
17. Hydrazine production;
18. Industrial dry cleaning (perchloroethylene)-transfer machines;
19. Industrial dry cleaning (perchloroethylene)-dry-to-dry machines;
20. Industrial process cooling towers;
21. Obpa/1,3-diisocyanate production;
22. Paint stripper users;
23. Photographic chemicals production;
24. Phthalate plasticizers production;
25. Plywood/particle board manufacturing;
26. Polyether polyols production;
27. Pulp and paper production;
28. Rocket engine test firing;
29. Rubber chemicals manufacturing;
30. Semiconductor manufacturing;
31. Symmetrical tetrachloropyridine production;
32. Tire production; and
33. Wood treatment.

(2) For area sources.

(a) Asbestos processing;

(b) Chromic acid anodizing;

(c) Commercial dry cleaning (perchloroethylene)-transfer machines;

(d) Commercial dry cleaning (perchloroethylene)-dry-to-dry machines;

(e) Commercial sterilization facilities;

(f) Decorative chromium electroplating;

(g) Halogenated solvent cleaners; and

(h) Hard chromium electroplating.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: August 12, 1993

FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on September 21, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation applies to existing major sources, existing area sources, constructions, reconstructions, and modifications of stationary sources located within a contiguous area and under common control, that emit or have the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants. This administrative regulation imposes no new requirements for the affected industry sources. Exempted from the provisions of this administrative regulation are solid waste incineration units, research facilities, radionuclide emitters and other sources regulated by the NRC, radionuclide emissions from elemental phosphorus plants, grate calcination elemental phosphorus plants, phosphogypsum stacks, marine vessel loading and unloading facilities, and electric utility steam generating units as defined in Section 112(a)(8) of the Act.

(a) Direct and indirect costs or savings to those affected:

1. First year: This administrative regulation contains lists of hazardous air pollutants and sources of hazardous air pollutants identical with those published by the U.S. EPA. This administrative regulation imposes no requirements on any source, and thus has no direct or indirect effect on costs or savings.

2. Continuing costs or savings: There will be no continuing costs or savings caused by this administrative regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation will cause no increases or decreases in costs.

(b) Reporting and paperwork requirements: This administrative regulation imposes no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings caused by this administrative regulation.

2. Continuing costs or savings: There are no continuing costs or savings caused by this administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: Some substances listed in this administrative regulation also are listed in 401 KAR 63:021 and 401 KAR 63:022.

(a) Necessity of proposed regulation if in conflict: There is no conflict. The list of hazardous air pollutants contained in this administrative regulation will be used to adopt the requirements of Title III of the Clean Air Act Amendments of 1990. Those requirements do not apply to toxic air pollutants contained in other administrative regulations.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

TIERING: Was tiering applied? No. Tiering is not applicable. There are no standards or requirements contained in this administrative regulation.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

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 on the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation is needed to meet the requirements of Title III of the Clean Air Act Amendments of 1990, found at 42 USC 7601-7621.

2. State compliance standards. This administrative regulation contains no compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation contains no minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation imposes no standards, responsibilities, or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Natural Resources
Division of Conservation

402 KAR 2:030. Soil and water conservation peer group.

RELATES TO: KRS Chapter 146, 224.70-100, 224.70-110, Chapter 262

STATUTORY AUTHORITY: KRS 146.080, 146.110

NECESSITY AND FUNCTION: KRS Chapter 262 establishes the state Division of Soil and Water Conservation within the Natural Resources and Environmental Protection Cabinet. The division coordinates with soil and water conservation districts and the Soil and Water Conservation Commission and secures the cooperation and assistance of federal, state, and local governments in the development of soil and water conservation programs. This administrative regulation establishes the soil and water conservation peer group and establishes its duty to review conservation compliance plans and best management practices and to develop statewide and regional agricultural groundwater protection plans.

Section 1. Definitions. The following definitions describe terms used in this administrative regulation. The terms not defined below shall have the meanings attributed by common use.

(1) "Agricultural production facility" means any tract of land except residences including all income-producing improvements: (a) Used for the production of livestock, livestock production, poultry, poultry products, or the growing of tobacco or other crops including timber;

(b) Devoted to and meeting the requirements and qualifications for payments pursuant to agricultural programs under an agreement with the state or federal government; or

(c) Commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.

(2) "Bad actor" means any person who engages in agricultural production activities, who receives notification of regional groundwater pollution and of the regional agricultural groundwater protection plan needed to protect the groundwater, and who is provided technical and financial assistance to implement the regional groundwater protection plan but still refuses or fails to comply with the regional groundwater protection plan.

(3) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water of the Commonwealth. Best management practices also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(4) "Conservation compliance plan" means a plan containing best management practices developed for persons engaged in agricultural production activities by the U. S. Department of Agriculture Soil Conservation Service, in conjunction with local conservation districts.

(5) "Corrective action" means an activity or measure taken to remedy groundwater pollution.

(6) "Generic groundwater protection plan" means a groundwater protection plan that can be applied to activities conducted at different locations because the activities are substantially identical and because the potentials of the activities to pollute groundwater are substantially the same.

(7) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, or solution conduits.

(8) "Groundwater pollution" means water pollution as defined in KRS 224.01-010 of groundwaters of the Commonwealth.

(9) "Groundwater protection plan" means a document that establishes a series of practices designed to prevent groundwater

pollution.

(10) "Pesticide" means:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; or

(c) Any substance or mixture of substances intended to be used as a spray adjuvant.

(11) "Timber" means trees produced and harvested as agricultural crops without the application of pesticides or fertilizers or with the application of pesticides or fertilizers if in accordance with a conservation compliance plan.

Section 2. Scope and Applicability. (1) This administrative regulation establishes the soil and water conservation peer group for the purpose of developing groundwater protection plans for agricultural production activities at agricultural production facilities and for assisting the persons engaging in agricultural production activities and others in matters related to prevention of groundwater pollution.

(2) The goal of groundwater protection plans for agricultural production activities is to fulfill the requirements of KRS 224.70-100 and 224.70-110. Groundwater protection plans shall establish practices designed to prevent the discharge of pollutants to groundwater.

(3) It is a purpose of this administrative regulation to accelerate and strengthen best management practices so as to achieve greater adaptation of best management practices to prevent, correct, and abate the pollution of groundwater; to provide technical and financial assistance, education, and research; to assist persons engaged in agricultural production activities; to address a broad range of groundwater protection concerns; to develop or to improve conservation best management practices for treating and preventing agricultural production activities' adverse impacts on groundwater; and to employ those best management practices in groundwater protection plans for agricultural production activities.

Section 3. Organization of Soil and Water Conservation Peer Group. (1) The soil and water conservation peer group shall be a multidiscipline peer group that shall evaluate, develop, and improve best management practices, establish statewide and regional agricultural groundwater protection plans, and otherwise promote soil and water conservation activities that protect groundwater from adverse impacts of agricultural production activities within the Commonwealth. Representatives of the soil and water conservation peer group shall be appointed by the commission established under KRS 146.090 and approved by the Secretary of the Natural Resources and Environmental Protection Cabinet. The soil and water conservation peer group shall have one (1) representative from each of the following:

(a) Natural Resources and Environmental Protection Cabinet's Division of Forestry;

(b) Natural Resources and Environmental Protection Cabinet's Division of Conservation;

(c) Kentucky Department of Agriculture;

(d) Kentucky Geological Survey;

(e) University of Kentucky College of Agriculture-Cooperative Extension Service;

(f) Agricultural production organizations;

(g) Commodity groups;

(h) Environmental organizations; and

(i) Individuals engaged in agricultural production.

(2) The U. S. Department of Agriculture Soil Conservation Service and the Agricultural Stabilization and Conservation Service may each designate one (1) representative to the soil and water conservation peer group.

(3) The Natural Resources and Environmental Protection Cabinet's Division of Water shall serve as an advisory, non-voting representative on the soil and water conservation peer group.

Section 4. Responsibilities of Soil and Water Conservation Peer Group. It shall be the primary responsibility of the soil and water conservation peer group to develop statewide, regional, and site-specific agricultural groundwater protection plans. In addition, the soil and water conservation peer group may:

(1) Review groundwater quality data as they become available;

(2) Review scientific research on groundwater quality and alternative best management practices research;

(3) Evaluate the adoption and effectiveness of best management practices, and modify best management practices standards to improve groundwater protection practices;

(4) Develop statewide, regional, and site-specific agricultural groundwater protection plan minimum standards for corrective actions and procedures to address potential and identifiable groundwater pollution problems from agricultural production, and continue to evaluate and modify those groundwater protection plans on an ongoing basis;

(5) Assist with the review of state-funded groundwater monitoring data and with the establishment of groundwater priority protection areas;

(6) Provide technical assistance to persons engaged in agricultural production activities and to the Soil and Water Conservation Commission in its efforts to coordinate groundwater protection as related to agricultural production;

(7) Work with the Soil Conservation Service, Agricultural Stabilization and Conservation Service, and state conservation districts to disseminate to persons engaged in agricultural production activities those best management practices, conservation compliance plans, and groundwater protection plans which address the protection of groundwater; and

(8) Within its discretion and upon request, assist agribusiness or others in development of groundwater protection plans.

Section 5. Preparation and Approval of Statewide Agricultural Groundwater Protection Plan. (1) No later than six (6) months from the effective date of this administrative regulation, the soil and water conservation peer group shall be in place and begin the review of the available data on best management practices and the evaluation of the effect of agricultural activities in Kentucky on the groundwater. Based upon this review and evaluation, the soil and water conservation peer group shall revise recommended best management practices as necessary to ensure protection of groundwater from pollution. The review, evaluation, and revision process shall be a continuing process as necessary to protect groundwater.

(2) The soil and water conservation peer group shall prepare a proposed statewide agricultural groundwater protection plan to address potential agricultural sources of pollution to groundwater in accordance with the provisions of 401 KAR 5:036. The soil and water conservation peer group shall submit the proposed statewide agricultural groundwater protection plan to the commission for review and approval. Upon approval, the commission shall submit the proposed statewide agricultural groundwater protection plan to the Division of Water for approval. The soil and water conservation peer group and the commission shall work with the Division of Water to revise the proposed plan, if necessary, until it is approved by the Division of Water.

(3) The statewide agricultural groundwater protection plan shall provide for known differences in hydrogeology throughout the state. The plan, at a minimum, shall also address the potential sources of groundwater pollution identified in 401 KAR 5:036, Section 5 and shall contain appropriate nutrient management practices, animal waste management practices, pesticide and fertilizer management practices, sediment control practices, and conservation tillage practices designed to prevent groundwater pollution for each category of agricultural production.

(4) The statewide agricultural groundwater protection plan shall constitute the minimum requirements to be used by the commission in assisting persons engaging in agricultural production activities in the revision and modification of their conservation compliance plans.

(5) Conservation districts and the commission shall provide technical and financial assistance, as necessary and available, to persons engaging in agricultural production activities who shall comply with the statewide agricultural groundwater protection plan pursuant to 401 KAR 5:036.

Section 6. Implementation. (1) The statewide agricultural groundwater protection plan prepared by the soil and water conservation peer group shall constitute the minimum requirements for use in the development of conservation compliance plans.

(2) If the Division of Water identifies groundwater pollution in a region, the soil and water conservation peer group shall reevaluate the effectiveness of the best management practices, conservation compliance plans, and the applicable provisions of the statewide agricultural groundwater protection plan in effect for agricultural production in that region.

(3) Within six (6) months after discovery of the pollution identified in subsection (2) of this section, the soil and water conservation peer group shall develop modifications to those best management practices, conservation compliance plans, and the statewide agricultural groundwater protection plan provisions the soil and water conservation peer group determines were ineffective in preventing the groundwater pollution for the region identified by the Division of Water. The modifications shall recognize regional differences in hydrogeology to the extent that any differences may have contributed to the identified pollution. The soil and water conservation peer group shall develop a regional agricultural groundwater protection plan to address the problems that caused the groundwater pollution in the region. The regional agricultural groundwater protection plan as revised or developed shall contain a compliance schedule for implementation of all new or revised practices designed to eliminate the problem. Upon approval by the Division of Water, the regional agricultural groundwater protection plan shall constitute the minimum requirements for the conservation compliance plans in effect in the region.

(4) The soil and water conservation peer group shall work with the U. S. Department of Agriculture Soil Conservation Service and the Agricultural Stabilization and Conservation Service, and the conservation districts to disseminate to persons engaging in agricultural production activities in the region identified by the Division of Water the modified best management practices, conservation compliance plans and groundwater protection plans developed by the soil and water conservation peer group.

(5) Upon notice from the Division of Water that groundwater pollution has been found in a region of the state, the commission and conservation districts shall provide notice to persons engaging in agricultural production activities within the region of the availability of technical and financial assistance. The notice shall also state that, in order to qualify for available assistance, the person engaging in agricultural production activities shall comply with the modified best management practices contained in the regional agricultural groundwater protection plan. The commission and the districts shall work with the persons engaging in agricultural production activities and the Division of Water to assist those persons in implementing the required corrective action.

(6) If a person engaging in agricultural production activities fails to implement the modified best management practices and conservation compliance plan required by the regional agricultural groundwater protection plan in accordance with the schedule set out in that plan, he shall be declared a bad actor and will become ineligible for further financial assistance from the commission and the conservation districts.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for September 28, 1993 at 7 p.m. eastern time at the auditorium in the Academic Services Building, at Kentucky State University in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by September 23, 1993, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Natural Resources and Environmental Protection Cabinet with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Jack A. Wilson no later than the close of the hearing on September 28, 1993. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability and provides, on request, reasonable accommodations including auxiliary aids and services necessary to afford an individual with disability an equal opportunity to participate in all services, programs, and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate forms for printed materials, should be submitted to Mr. Wilson at the address below.

CONTACT PERSON: Jack A. Wilson or H. Stanley Head, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency contact: Jack A. Wilson or H. Stanley Head

(1) Type and number of entities affected: This proposed regulation establishes the soil and water conservation peer group and establishes its duty to review conservation compliance plans and best management practices and to develop statewide, regional, and site-specific agricultural groundwater protection plans. This regulation imposes no requirements on agricultural production facilities, but allows the termination of financial support for those agricultural producers who are declared bad actors. A more detailed description of entities affected by development of groundwater protection plans is contained in the regulatory impact analysis prepared for 401 KAR 5:036. This proposed regulation affects the members of the soil and water conservation peer group, the agency providing administrative support to the peer group, the Soil and Water Conservation Commission, and the Soil and Water Conservation Districts. The soil and water conservation peer group is composed of one representative from each of the following agencies: Natural Resources and Environmental Protection Cabinet's Division of Forestry; Natural Resources and Environmental Protection Cabinet's Division of Conservation; Kentucky Department of Agriculture; Kentucky Geological Survey; University of Kentucky College of Agriculture-Cooperative Extension Service; agricultural production organizations; commodity groups; environmental organizations; and individuals engaged in agricultural production.

(a) Direct and indirect costs or savings to those affected:

1. First year: Each agency that is a member of the soil and water conservation peer group will incur costs to provide staff for a representative to attend meetings, to review data and information on best management practices and to assist in the development of agricultural groundwater protection plans. The Soil and Water

Conservation Commission will incur costs to review agricultural groundwater protection plans, to assist individuals engaged in agricultural production activities in revising and modifying their conservation compliance plans, and to provide information on technical and financial assistance. The Soil and Water Conservation Districts will incur costs to provide technical assistance to individuals engaged in agricultural production activities and to work with individuals to implement corrective actions for groundwater pollution. Individuals engaged in agricultural production who are declared bad actors may lose financial assistance. Individuals engaged in agricultural production activities will incur cost savings since they may use the statewide or regional groundwater protection plans and will not have to develop agricultural groundwater protection plans. This is an estimated costs savings of up to $5,000 per farm. Costs for implementation of agricultural groundwater protection plans are continued in the regulatory impact analysis for 401 KAR 5:036.

2. Continuing costs or savings: This proposed regulation charges the soil and water conservation peer group with development of the statewide agricultural groundwater protection plan within two years of the promulgation date of this proposed regulation. Therefore, the costs for the second year may also include costs to attend meetings, to review data and information on best management practices, and to assist in development of agricultural groundwater protection plans. This proposed regulation charges the soil and water conservation peer group with development of regional agricultural groundwater protection plans in response to identified groundwater pollution. Continuing costs will be incurred if groundwater pollution is identified that requires the development of regional agricultural groundwater protection plans.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The soil and water conservation peer group must develop state and regional agricultural groundwater protection plans for the agricultural community. These state and regional agricultural groundwater protection plans must be submitted to the Division of Water for review.

(2) Effects on the promulgating administrative body: The cabinet will incur costs to provide administrative support to the soil and water conservation peer group during development of agricultural groundwater protection plans and to assist in disseminating educational material to persons engaging in agricultural production activities concerning best management practices, conservation compliance plans, and agricultural groundwater protection plans.

(a) Direct and indirect costs or savings:

1. First year: Costs incurred by the cabinet will be personnel costs for providing administrative support to the soil and water conservation peer group and for reviewing the statewide agricultural groundwater protection plans.

2. Continuing costs or savings: Any continuing costs would be personnel costs for reviewing any revisions to statewide or regional agricultural groundwater protection plans developed by the soil and water conservation peer group. Continued savings include the costs individuals save by using the statewide or regional agricultural groundwater protection plans.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet must also prepare correspondence for review and approval of agricultural groundwater protection plans submitted to the cabinet.

(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposed regulation was developed with a consensus group of persons representing the public and the regulated community working with the cabinet. The consensus group did not select to use groundwater classification, groundwater quality standards, and permit requirements proposed in a draft regulation. Although the group was not able to reach consensus on all details of regulations to protect groundwater, the consensus group did agree that groundwater regulations should be proactive rather than reactive. Proactive groundwater regulations focus on prevention of pollution rather than remediation after pollution has occurred. The group's position was that for agricultural production facilities it would be appropriate for a peer group to develop agricultural groundwater protection plans instead of individuals developing individual plans for each agricultural production facility.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulation does not conflict, overlap, or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict. Several existing programs contain groundwater protection requirements. The proposed regulation has been structured to avoid duplication, overlaps or conflicts.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions? For other regulatory programs with requirements for groundwater protection, the requirements of the existing programs may be incorporated into the groundwater protection plans.

(6) Any additional information or comments: There are no additional comments or information.

Tiering: Was tiering applied? Yes. The peer group will develop regional agricultural groundwater protection plans only for areas where groundwater pollution has been identified rather than regional agricultural groundwater protection plans for each region across Kentucky.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation is in response to KRS Chapters 146 and 262. There is no federal mandate.

2. State compliance standards. There is no federal mandate.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

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? This proposed regulation does not relate to any aspect of a local government, including services provided by that local government.

2. State what unit, part or division of local government this administrative regulation will affect. This proposed regulation will not affect any unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This proposed regulation does not relate to any aspect of local government.

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. This proposed regulation will not affect expenditures or revenues of local government.

Revenues (+/-): This proposed regulation does not generate revenues for local government.

Expenditures (+/-): This proposed regulation does not incur

expenditures for local government.
Other explanation: None

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:110. Contractor costs.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280
STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130
NECESSITY AND FUNCTION: KRS 224.60-130 requires the commission to establish a range of amounts to be paid from the fund for the cost of corrective action, and to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This regulation establishes the range of amounts that will be paid for the performance of particular aspects of corrective action and the manner of providing bids by contractors to determine eligibility for reimbursement from the fund.

Section 1. Range of Amounts to be Paid by the Fund for the Cost of Performing Corrective Action. (1) The commission shall not pay more than the following amounts for the performance of corrective action by certified contractors:

(a) Pavement removal and replacement:

Asphalt	
Removal, per cubic yard	$5.60
Replacement, per cubic yard	$10.30
Concrete	
Removal, per cubic yard	$11.75
Replacement, per cubic yard	$19.25
Transportation of asphalt or concrete to disposal facility, per mile, per cubic yard	$0.14

(b) Excavation and disposal of contaminated soil:

Excavation and stockpiling or loading directly to trucks, per cubic yard	$2
Clean soil, backfill and compact, per cubic yard	$15
Transportation to disposal facility, per mile, per cubic yard	$0.14
Disposal fee	Actual cost

(c) Treatment of soils or water:

Pump contaminated water and charcoal filtration, per gallon	$0.50
Operation of packed tower air stripper, per hour	$1
Treatment of contaminated soil by thermal desorber, per ton	$25
Landfarming, per ton	$25
Other treatment of contaminated soil, per ton	$25

(d) Labor rates, per hour:

Labor rates include all fringes and benefits, and contractor's profits.

Carpenter	$30
Cement finisher	$30
Electrician	$30
Electrical contractor	$36
Equipment operator	$30
Laborer	$26
Master plumber	$36
Journeyman plumber	$30
Apprentice plumber	$25

(e) Geologic and field services labor rates, per hour:

Labor rates include all fringes and benefits, and contractor's profits.

Certified contractor	$90
Professional engineer	$75
Engineer-in-training	$50
Geologist	$50
Registered geologist	$75
Secretarial	$15
Mileage, per mile for automobile	$0.22
Travel expenses and other reimbursables	Actual cost
Long distance telephone calls	Actual cost
Seismic exploration, per hour	$100
Resistivity survey, per hour	$100
Spontaneous potential survey, per hour	$100
Terrain conductivity meter (equipment charge),	
Per day	$200
Per week	$500
Soil gas analysis for VOC (equipment charge), per day	$150

(f) Environmental exploration:

Mobilization of drilling equipment to the site (includes rig, two (2) man crew, and initial off-site steam cleaning)	
In-town, lump sum	$350
Out-of-town - $5 per mile one way plus	$100
Installation of monitoring well, per linear foot	$46
Drilling (excluding monitoring well) per linear foot	$26

For depths greater than 60 feet, add $2.40 per linear foot.

Hourly services (rig and two (2) man crew)	
May include drilling, well installation, decontamination, well development, difficult moving, and delay (not related to weather or mechanical breakdown), per hour	$115
Additional crew member, per hour	$25
Additional crew member with pickup truck, per hour	$35
Equipment	
Steam cleaner, per day	$60
Self-contained steam cleaning unit, per day	$110
Grout unit, per day	$60
Water trailer (500 gal.), per day	$50
Water truck (1000 gal.) with driver, per hour	$40
Water truck (1000 gal.) without driver, per day	$150
Materials	
Well materials, decontamination supplies, health and safety supplies	Actual cost plus 15%

(g) Sampling analysis, including labor to take sample, sampling materials, transportation of sample, and chain of custody:

Soil Sample	
BTEX (benzene, toluene, ethylbenzene, xylene) Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	$50
Polynuclear Aromatic Hydrocarbons Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	$150
Total Petroleum Hydrocarbons Method SW 846 9071	$50
Lead Method SW 846 7421 or 6010	$30
Water Samples	
BTEX (benzene, toluene, ethylbenzene, xylene) Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	$50
Polynuclear Aromatic Hydrocarbons Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	$150
Total Petroleum Hydrocarbons Method SW 846 9070	$60
Total Lead Method SW 846 7421 or 6010	$10
Sludge and Cleaning Liquid Samples	
Toxicity Characteristic Leading Procedure for the parameters of metals, volatile organics,	$650

and Acid/Base/Neutral.

If the parameter of Pesticides and Herbicides is required	$50

(h) Legal Services

Attorney

Sole practitioner, per hour	$40
Partner or principle in firm, per hour	$75
Associate in firm, per hour	$60
Paralegal, per hour	$30

(2) An amount in excess of the maximum amount set forth in subsection (1) may be approved by the commission if the contractor demonstrates that the additional cost is necessary to the performance of corrective action and the services or materials are not available at a lower cost.

Section 2. Range of Amounts To Be Paid For Items Not Listed In Section 1 of this Administrative Regulation. (1) Items not listed in Section 1 of this administrative regulation are subject to the following qualifications:

(a) Original invoices from manufacturers or retailers shall be supplied to the commission;

(b) Unlisted items shall be subject to a maximum reimbursable amount of fifteen (15) percent above cost, which includes rentals or purchases;

(c) No markups shall be allowed on any pass through costs such as utilities or employee expense accounts; and

(d) The cost is reasonable and necessary to the performance of corrective action.

(2) Costs for alternative corrective action technologies, such as soil venting, bioremediation, and groundwater treatment systems, shall be subject to the range of costs set forth in Section 2 of this administrative regulation where appropriate. Additional costs associated with the technology shall be justified as to reasonableness and necessity.

(3) Costs of corrective action performed by an owner or operator as an initial response or an action to prevent or remedy an emergency situation, or as directed by the cabinet, shall be subject to the range of costs set forth in Section 1 of this administrative regulation where appropriate. These costs shall be justified as to reasonableness and necessity.

Section 3. Eligibility Criteria for Persons Who Contract to Perform Corrective Action. To be eligible for payment from the fund, persons who contract to perform corrective action shall be certified according to 415 KAR 1:115 and shall provide a bid proposal to the owner or operator. The bid shall be submitted on the bid proposal form dated August, 1993, hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

(1) Personnel shall be categorized according to the applicable type of personnel described in Section 1 of this administrative regulation and the appropriate rate applied;

(2) Costs shall be itemized to comply with the cost items listed in Section 2 of this administrative regulation;

(3) Original invoices shall be submitted with a request for payment or reimbursement from the fund;

(4) Documentation and additional information to support the request for payment or reimbursement shall be supplied as requested by commission staff.

Section 4. Certification of Contractor Costs. (1) The commission may issue a request for proposals from individuals or companies engaged in the performance of corrective action for releases from petroleum storage tanks. The commission shall establish the date by which the proposals are to be submitted.

(2) The commission shall specify in the notice of the request for proposals the information to be submitted by the individual or company. The information to be supplied shall include:

(a) Verification that the submitter is a certified contractor, or a company employing certified contractors. A company shall include the name and position of its certified contractors;

(b) A statement of qualification of the individual or company, including a statement of relevant experience in the performance of corrective action for releases from petroleum storage tanks;

(c) A list of references, including the name, business address, and telephone number of at least three (3) persons for whom the individual or company has performed corrective action for a release from a petroleum storage tank. If the company has not performed corrective action for at least three (3) persons, then a list of persons for whom the certified contractors employed by the company have performed corrective action may be submitted;

(d) A schedule of fees that the individual or company proposes to charge an owner or operator for the performances of corrective action for a release from a petroleum storage tank. The schedule of fees shall set forth a cost for each of the items listed in Section 1 of this administrative regulation. The schedule shall note any differences or variations in listed costs attributable to length of necessary transportation, or other factors. If subcontractors are to be used, then the schedule shall specify the maximum cost to be charged by the individual or company for the corrective action activities to be performed by a subcontractor;

(e) A verification by the individual, or an authorized agent of the company, that the proposal is true and accurate, and that the schedule of fees shall be applicable for a period of one (1) year from the date by which proposals are to be submitted to the commission;

(3) The commission shall review all proposals received after the date established by the commission for submittal of proposals. Proposals are to be submitted for the purpose of assisting the commission in the regulation of persons who contract to perform corrective action. These proposals shall not be made available for public inspection until after the date for submittal established by the commission, since to do so would create an unfair advantage for competitors of the individual or company. Proposals may not be amended after the date for submittal, except as provided in subsection (6) of this section.

(4) Commission staff shall review each proposal to verify that the individual or company complies with the requirements for contractor certification, is qualified to perform corrective action for releases from petroleum storage tanks, and the proposed costs comply with the requirements of Section 1 of this administrative regulation.

(5) If the commission verifies that the individual or company complies with the requirements of subsection (4) of the section, then the individual or company shall be placed upon a list of approved contractors that shall be made available to owners or operators of petroleum storage tanks upon request.

(6) If the commission verifies a proposal, then the individual or company shall not charge the owner or operator more than the listed costs on the schedule of fees unless the individual or company demonstrates to the satisfaction of the commission that:

(a) The increase in costs was beyond the reasonable control of the contractor;

(b) The increase is due to an increase in costs to the contractor, such as an increase in disposal fees or equipment costs, and is supported by adequate documentation; and

(c) The increase is reasonable and necessary to cover the actual costs of performing corrective action.

(7) Claims submitted to the commission by an owner or operator for the costs of corrective action performed by an approved contractor shall be reviewed by the commission staff to determine that the costs were necessary.

Section 5. This regulation shall become effective January 1, 1994.

ROBERT LOGAN, Chairman

APPROVED BY AGENCY: August 11, 1993

FILED WITH LRC: August 13, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on September 22, at 1 p.m. in the offices of the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by Friday, September 17, 1993, 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 on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: G. Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: G. Morgan Kelly

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: There should be no direct or indirect costs to owners or operators of underground storage tanks. This regulation will simplify the bid process, and will not increase the amount of paperwork required to receive reimbursement from the fund. Contractors will incur indirect costs due to the need to conform their bid practices and invoicing to the provisions of this regulation.

2. Continuing costs or savings: After the initial adjustments necessary to conform practices to the requirements of this regulation, the continuing costs or savings should be the same as that experienced under the current regulations of the commission.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): Since a standard bid form will be required, owners or operators should experience savings due to the simplification of the bid process. Owners or operators will be able to compare bids directly.

(b) Reporting and paper requirements: Contractors will be required to submit a standard bid form to owners or operators of petroleum storage tanks. There will be no change in the paperwork required for owners or operators to receive reimbursement or payment from the fund.

(2) Effects on the promulgating administrative body:

(a) direct and indirect costs or savings:

1. First year: The commission will experience direct savings due to the simplification of the bid process. By establishing maximum costs that may be charged for specified activities in corrective action, it will be easier for commission staff to review claims for eligibility. Staff should be able to more quickly review claims, and payment to owners and operators should be quicker.

2. Continuing costs or savings: The commission anticipates that savings will continue due to the simplified process. However, the amount of savings will decrease after the first year.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms and bid forms.

(3) Assessment of anticipated effect on state and local revenues:

None

(4) Assessment of alternative methods: reasons why alternatives were rejected: (a) Three principal sources were used to arrive at the range of costs established by this regulation:

(1) "National Construction Estimator:, 40th Edition, 1992; Craftsman Book Company, Carlsbad, California;

(2) "Cost Guide for Remediation Equipment at UST Sites (Draft)", May 1993, United States Environmental Protection Agency, Office of Underground Storage Tanks;

(3) Finance and Administration Cabinet Contracts with Underground Storage Tank Contractors for corrective action and laboratory services.

Alternative: 1. Less stringent: A less stringent requirement would be to allow the same system currently in place to continue. This results in increased staff time due to the varying nature of contractor bids and manner of invoicing costs. Current determinations are based upon the reasonableness and necessity of costs. By establishing a maximum range this review will be simplified.

2. More stringent: The commission could establish a more detailed listing of activities performed in corrective action, and the application of a maximum cost. By trying to identify those basic actions required in most corrective actions, flexibility is allowed to the contractor to identify the best and most cost efficient method of corrective action

3. Present proposal: Present proposal is adopted based upon the documents listed above. Based upon that documentation, the costs are believed to be reasonable and consistent with common practices at corrective action sites.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or government policies in conflict with the proposed regulation that have been identified.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provision. There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No. This regulation applies to all owners or operators of petroleum storage tanks, and contractors applying for reimbursement or payment from the Fund. The requirements are the same for the performance of corrective action at all sites.

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? No.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect any division of local government that owns or operates a petroleum storage tank.

3. State the aspect or service of local government to which this administrative regulation relates. KRS 224.60-120 through 224.60-140 provides for the creation of a program to assist owners and operators in the performance of corrective action due to a release from a petroleum storage tank. This administrative regulation relates to any aspect of local government requiring the performance of corrective action for which reimbursement from the fund will be sought.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will require local governments to meet the same provisions to receive reimbursement from the fund as an owner or operator of a nonpublic facility.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:115. Contractor certification.

RELATES TO: KRS 224.60-110, 224.60-130
STATUTORY AUTHORITY: KRS 224.60-130
NECESSITY AND FUNCTION: KRS 224.60-130 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation sets forth the criteria for obtaining certification from the commission to be eligible to contract to perform corrective action for a release from an underground petroleum storage tank, and to be eligible to receive reimbursement or payment from the fund. This administrative regulation is necessary to set minimum standards for determining technical competency and proficiency in the performance of corrective action, and to determine financial capability through proof of insurance.

Section 1. Definitions. Except as defined in this section, the terms in this regulation shall have the same definition as in KRS 224.60-115 or 415 KAR 1:050.

(1) "Certified contractor" means an individual certified by the commission as qualified to engage in the performance or supervision of corrective action at a facility in the event of a release from a petroleum storage tank system.

(2) "Company" means a person other than an individual engaged in the business of performing corrective action for a release from a petroleum storage tank system who employs one (1) or more certified contractors.

(3) "Participation in" means direct and substantial involvement in each aspect of corrective action, including site characterization, preparation of site investigation reports, preparation of proposed corrective action plan, and implementation of a corrective action plan approved by the cabinet.

(4) "Supervise" means being physically on site and having the authority and responsibility for the direction of employees engaged in performing corrective action at a facility in the event of a release from petroleum storage tank system, and having the ability to exercise independent judgement and direct the activities of employees and subcontractors in the performance of corrective action to achieve compliance with the administrative regulations of the cabinet.

Section 2. Applicability. (1) Effective January 1, 1994, no costs for actions performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund unless the corrective action is performed or supervised by an individual who is certified by the commission, and the corrective action is performed in compliance with the administrative regulations of the cabinet set forth in 401 KAR Chapter 42.

(2) The commission shall not reimburse costs of corrective action incurred after January 1, 1994, unless the corrective action is performed or supervised by an individual that has been certified pursuant to this administrative regulation.

(3) Certified contractors shall perform or supervise corrective action, including but not limited to, site checks, site investigations, and preparation of corrective action plans, in accordance with the administrative regulations of the cabinet.

(4) To be eligible for reimbursement from the fund, the person who contracts to perform corrective action shall designate the certified contractor responsible for supervision of the corrective action prior to incurring costs by giving written notice to the owner or operator of the facility and the commission. If the certified contractor changes, a new notice shall be given.

Section 3. Application Requirements. (1) Each applicant for certified contractor shall meet all of the following requirements:

(a) Submit an application to the commission on the Certified Contractor Application form dated August, 1993, hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

(b) Submit verification of experience by participation in the performance of corrective action at facilities where a release occurred from a petroleum storage tank system;

(c) Complete the examination requirements of this administrative regulation; and

(d) Provide proof of financial capability to perform corrective action and to compensate third parties for bodily injury and property damage caused by the certified contractor, or company employing the certified contractor, by submitting certificates of general liability insurance in the minimum amount of $1,000,000 and pollution liability insurance in the minimum amount of $100,000 per occurrence. The proof of financial capability shall be provided prior to the issuance of a certificate by the commission.

(2) The application shall be denied by the commission for any of the following:

(a) The applicant fails to provide the information required by the application form; or

(b) The applicant fails to comply with the experience requirements of this administrative regulation; or

(d) The applicant fails to successfully pass the examination required by this administrative regulation; or

(e) The applicant makes a misrepresentation or submits false information in the application; or

(f) The applicant fails to provide proof of the insurance coverage required by this section.

Section 3. Experience Requirements. (1) The individual making application shall demonstrate participation in the performance of corrective action at a minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.

(2) Technical training approved by the commission shall reduce the experience requirement of participation in the performance of corrective action to a minimum of four (4) facilities.

(3) A professional engineer registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

(4) A certified professional geologist registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

Section 4. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the commission in compliance with this section.

(1) The examination for certification shall be a written multiple choice examination covering all aspects of corrective action for a release from a petroleum storage tank system. The examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to performing corrective action where a release has occurred from a petroleum storage tank system.

(2) A minimum score of seventy-five (75) percent on the examination shall be considered passing.

(3) Any applicant who fails the examination shall not reapply within ninety (90) days.

(4) Examinations shall be given quarterly through January 1, 1995, and semiannually thereafter.

(5) An application shall be filed with the commission at least ten (10) days in advance of the testing date to take the examination.

(6) All examinations shall be graded and the applicants shall be notified within fifteen (15) days. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant by appointment.

(7) The commission shall furnish the applicant with instructions for taking the examination upon receipt of a completed application. Instruction sheets shall refer the applicant to appropriate laws, regulations and industry publications.

Section 5. Certification and Renewal Procedures. (1) The commission shall issue a certificate to each individual who successfully complies with this administrative regulation. The certificate shall be renewed annually.

(2) An application for renewal shall be submitted to the commission on the Certified Contractor Application for Renewal form dated August, 1993, hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

(3) A certified contractor shall submit proof of financial capability, as required by Section 3(1)(d) of this administrative regulation, at time of renewal, and shall demonstrate that the insurance coverage shall be effective for the following year.

(4) The renewal of a certificate shall be denied by the commission for any of the following:

(a) The applicant fails to provide the information required by the Certified Contractor Application for Renewal form.

(b) The applicant makes a misrepresentation or submits false information in the application for renewal; or

(c) The applicant fails to demonstrate the insurance coverage required by subsection (3) of this section; or

(d) The applicant failed to supervise a corrective action during the year prior to renewal; or

(e) The applicant fails to maintain a professional registration.

(3) An applicant denied a certification or a renewal may appeal the determination by requesting a hearing pursuant to 405 KAR 1:120.

(4) The commission may require that a certified contractor take and pass a written examination to renew a certification if there has been a significant change in the laws, codes or industry recommended practices with respect to performing corrective action since the date of original certification.

Section 6. Revocation or Suspension of Certification. A certificate issued pursuant to this regulation may be suspended or revoked by the commission for the following:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated any provision of this regulation or any required federal, state or local regulation, code or standard relating to corrective action; or

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to perform corrective action in violation of standards of the State Fire Marshall or the cabinet;

(3) The certified contractor obtained the certification through fraud or misrepresentation.

(4) The certified contractor fails to perform a corrective action in a manner consistent with generally acceptable professional standards.

(5) The certified contractor fails to maintain general liability insurance as required by Sections 3(1)(d) and 5(3) of this administrative regulation.

Section 7. Nonaffiliation with Laboratory. The certified contractor, or company employing the certified contractor, and any of his or her subcontractors is prohibited from using a laboratory for environmental analytical work which is affiliated with the underground petroleum tank owner or operator, prime contractor, private contractor, or subcontractor for that particular site.

Section 8. This regulation shall become effective January 1, 1994.

ROBERT LOGAN, Chairman

APPROVED BY AGENCY: August 11, 1993

FILED WITH LRC: August 13, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on September 22, 1993, at 1 p.m. in the offices of the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by September 17, 1993, 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 on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: G. Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: G. Morgan Kelly

(1) Type and number of entities affected: This proposed regulation will affect approximately 150 contractors in the Commonwealth of Kentucky who perform corrective action due to releases from petroleum storage tanks.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be an indirect cost due to the need to have persons certified by the commission to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification. There will be a direct cost to obtain the required insurance coverage.

2. Continuing costs or savings: There will be a continuing cost due to the need to apply annually for renewal of the certification, and to maintain the required insurance coverage.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Individuals will be required to complete and file the application for certification and the application for renewal, and to submit proof of insurance coverage.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The commission will experience direct costs due to the need to prepare and administer the test for certification of contractors; receive, review and maintain applications for certification; and to identify the proper materials for the certification process.

2. Continuing costs or savings: The commission anticipates continuing costs due to the need to upgrade the test on a periodic basis, to identify new materials concerning performance of corrective action, and to process applications for renewal.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The commission believes that it has adequate staff at this time to implement and administer this program.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process applications for certification and applications for renewal, and proof of insurance coverage. The commission will provide applicants with information

with which they must be familiar to obtain certification.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods: reasons why alternatives were rejected: The commission is granted the statutory authority to establish requirements that must be met by contractors to receive reimbursement from the fund. Based upon its experience in administration of the program since 1990, the commission believes that a certain minimum level of technical proficiency and competence must be established by persons responsible for the performance of corrective action. This proficiency and competency should ultimately result in a lowered cost of corrective action.

Alternative: 1. Less stringent: The less stringent provision would be to not to require a certification program. This has been rejected on the basis that experience has indicated that a certain minimum level of technical proficiency and competency is required.

2. More stringent: A more stringent alternative has not been identified. This regulation will establish minimum standards of technical proficiency and competency.

3. Present proposal: The proposed regulation establishes minimum requirements for technical proficiency and competency. It will require that the commission identify those standards with which a person performing corrective action must be familiar.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: This regulation will overlap and supplement 815 KAR 30:060, Underground Petroleum Storage Tank Installer/Remover Certification Regulation of the State Fire Marshall.

(a) Necessity of proposed regulation if in conflict: There is no conflict. 815 KAR 30:060 applies only to the installation and removal of underground storage tanks. This regulation will not duplicate or conflict with those requirements. This regulation is more comprehensive in that it requires a knowledge of all actions necessary to properly perform corrective action due to a release from a petroleum storage tank.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No. This regulation applies to all individuals and companies contracting to perform corrective action for which reimbursement or payment will be sought from the fund.

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? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? See response to #2.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board

704 KAR 20:620. Interdisciplinary early childhood education, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030
STATUTORY AUTHORITY: KRS 161.028

NECESSITY AND FUNCTION: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, the statute requires teacher education institutions to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary; the valued educator outcomes; and the standards for approval of programs leading to such a certificate.

Section 1. Definitions. The following definitions shall apply for purposes of this administrative regulation:

(1) "Interdisciplinary" means a preparation program that includes child development, family studies, early childhood education, and special education.

(2) "Valued education outcome" means an outcome that a certified early childhood educator shall be able to demonstrate as he performs teaching and managing functions in the workplace. Each valued educator outcome statement describes the general set of teaching or managing tasks that an early childhood educator shall perform and the contexts in which he shall perform the tasks.

(3) "Performance criteria" means the standard concepts and processes that shall govern performance to teach or manage tasks. The extent to which criteria are met shall determine the quality of the early childhood educator's performance on a given task. Scoring rubrics or guides developed from the criteria shall enable the setting of standards of performance and the measurement of performance.

(4) "Cultural diversity" means the wide range of differences among individuals that result from cultural and ethnic backgrounds, socioeconomic status, gender, personality traits, physical abilities and disabilities, and the interaction of factors of variability.

Section 2. (1) The Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who has completed a bachelor's degree and the approved program of preparation for this certificate as described in Sections 7, 8, and 9 of this administrative regulation at a teacher education institution approved by the Education Professional Standards Board. In addition, the applicant shall complete the written tests and a one (1) year internship as provided in this administrative regulation.

(2)(a) In order to satisfy the testing prerequisites for teacher certification as required by KRS 161.030, the applicant shall score at least the following minimum passing scores on the tests identified below:

1. The NTE Core Battery tests:

a. Communication skills, 646;

b. General knowledge, 643;

c. Professional knowledge, 644.

2. Applicants shall successfully complete a test of knowledge specific to interdisciplinary early childhood teaching which shall be identified by the Education Professional Standards Board pursuant to KRS 161.030.

(b) The tests may be waived for out-of-state teachers who have two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program on at least a half-time basis.

(3) Upon successful completion of an approved program of preparation and testing, the Education Professional Standards Board shall issue a statement of eligibility in accordance with KRS 161.030.

(4) The Education Professional Standards Board shall issue the one (1) year certificate for the beginning teacher internship as provided in KRS 161.030 and 704 KAR 20:320 upon applicant's

confirmation of employment in a position teaching children from birth to entry into a primary program on at least a half-time basis in a school which meets the criteria identified in KRS 161.030.

(5)(a) The beginning teacher internship may be waived for out-of-state applicants who have completed two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program.

(b) The beginning teacher internship may be waived for applicants who have completed two (2) or more years of successful experience in a position teaching children from birth to entry into a primary program on at least a half-time basis in Kentucky while holding one (1) of the following credentials:

1. Baccalaureate or higher degree in child development or early childhood education or early childhood special education.
2. Certification valid for kindergarten.
3. Special education certification valid for primary grades.

Section 3. (1) The Education Professional Standards Board shall issue a Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, for a duration period of five (5) years, except as follows:

(a) The initial certification for the beginning teacher internship shall be issued for a duration period of one (1) year. The certificate shall be extended for the remainder of the five (5) year period upon successful completion of the beginning teacher internship as provided in 704 KAR 20:320.

(b) Recency of preparation shall be a prerequisite for the issuance of certificates as provided in 704 KAR 20:045. An initial certificate valid for a one (1) year period shall be issued to an applicant who has completed the program of preparation more than five (5) years preceding the date of receipt of the certificate application form or who has not completed six (6) semester hours of graduate credit within the five (5) year period. The certificate shall be extended for the remainder of the five (5) year period upon completion of six (6) semester hours of graduate credit by September 1 of the year of expiration. The recency of preparation requirement shall be waived for applicants for initial Kentucky certification who have completed a planned fifth-year program provided they have completed three (3) years of successful teaching experience within the last five (5) years.

(2) The first five (5) year renewal shall require completion by September 1 of the year of expiration of fifteen (15) semester hours of graduate credit.

(3) The second five (5) year renewal shall require completion of the planned fifth-year program as defined in 704 KAR 20:020 by September 1 of the year of expiration.

(4) After completion of the planned fifth-year program, the certificate shall be renewed for subsequent five (5) year periods upon completion of three (3) years of successful teaching experience or six (6) semester hours of credit by September 1 of the year of expiration.

Section 4. (1) The Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, shall be valid for teaching children from birth to entry into the primary program. This includes teaching children in kindergarten or other programs for five (5) year old children where these programs are operated separately from the primary program. Persons holding this certificate shall serve as primary developers and implementers of individual programs for children with and without disabilities including individual education plans (IEP's) and individual family service plans (IFSP's) with consultation and support from specialists according to the needs of the child (e.g., speech-language pathologists, occupational and physical therapists, nurses, educators of the hearing impaired or vision impaired, and others).

(2) Effective with the 1999-2000 academic year all baccalaureate and postbaccalaureate persons teaching children from birth to entry into the primary program shall hold the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary. By the 1999-2000 school year, the Kentucky Department of Education shall report to the Education Professional Standards Board regarding continuation of supervised, nonbaccalaureate personnel as teachers.

Section 5. Beginning with the 1994-95 academic year and through the 1998-99 academic year, teachers of children from birth to entry into the primary program who do not hold the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, may be employed as provided in 704 KAR 3:410, Section 6 for Level III supervised, nonbaccalaureate teachers and for baccalaureate and postbaccalaureate teachers under the following conditions:

(1) Level I personnel shall hold one (1) of the following credentials: baccalaureate or higher degree in child development, early childhood education, or early childhood special education; certification valid for kindergarten; special education certification valid for primary grades.

(2) If personnel with Level I qualifications are not available, the local board may request approval for Level II personnel who have a minimum of one (1) year of early childhood training or experience and who hold one (1) of the following credentials: a degree in family studies, social work, psychology, registered nurse, certification or licensure in speech communication disorders or speech-language pathology, or other related area including education if not specified under Level I.

(3) Personnel with qualifications identified in subsections (1) and (2) of this section shall:

(a) Be enrolled in an approved program leading to the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary; and

(b) Develop an individual program of studies with an adviser in an approved program for preparation to qualify for the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary.

Section 6. (1) All teacher preparation institutions offering approved programs of preparation leading to the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, shall establish an assessment system to judge the performance of candidates on the valued educator outcomes identified for this certificate.

(2) For candidates who have completed at least one (1) year of successful teaching experience with children from birth to entry into the primary program, the teacher preparation institution shall use this system to evaluate the performance of the candidate on some or all of the valued educator outcomes. For those outcomes which the candidate demonstrates an acceptable level of performance, the teacher education institution shall waive the corresponding curriculum requirements.

Section 7. Standards for Program of Preparation. In order to receive approval of the Education Professional Standards Board, a program of preparation leading to the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, shall meet the following standards:

(1) The program shall be designed to prepare candidates to teach and manage tasks as identified in the valued educator outcomes and accompanying performance criteria listed in Section 9 of this administrative regulation.

(2) The program shall include a system of continuous assessment to evaluate the candidate's progress and level of attainment on the valued educator outcomes and the related performance criteria. The assessments shall include performance on authentic teaching and managing tasks in settings that are inclusive of children across abilities and contexts. Candidates shall be evaluated by paper and pencil tests and authentic assessments of performance.

(3) The program of preparation shall ensure that candidates from

culturally diverse backgrounds are recruited and retained in the program.

(4) The program of preparation shall provide the candidate with knowledge and experiences to perform teaching and managing tasks identified in the valued educator outcomes with children from culturally diverse backgrounds.

Section 8. Application for Program Approval. (1) A teacher education institution which proposes to offer a program of preparation leading to the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, shall make application for approval to the Education Professional Standards Board. The application for approval shall include a program description which includes the following:

(a) Program outcomes: include valued educator outcomes for interdisciplinary early childhood education.

(b) Program components: provide list of coursework, clinical and field experiences, and student teaching related to general education, interdisciplinary specialty studies, and professional studies.

(c) Faculty: provide list of faculty responsible for and involved with the conduct of the specific program and their qualifications.

(d) Students: describe admission and retention policies and procedures that are specific to this program.

(e) Plan for assessment: description of the system of continuous assessment of valued educator outcomes.

(2) Institutions may receive interim program approval for a one (1) year period which may be extended for one (1) additional year while the institution develops the assessments identified in Section 7(2) of this administrative regulation. At the end of the period of interim approval the institution shall apply for full approval to the Education Professional Standards Board.

Section 9. Valued Educator Outcomes and Performance Criteria. (1) Valued Educator Outcome I.

(a) The early childhood educator shall design and organize learning environments, experiences, and instruction that address the developmental needs of infants, toddlers, preschool children, and kindergarten children and Kentucky's Learning Goals and Valued Outcomes. The early childhood educator shall develop plans for:

1. Implementation in a classroom setting;

2. Implementation in a home or other settings;

3. Implementation by teaching assistants and other staff in a variety of settings; and

4. Training teaching assistants, other staff, and parents. These plans shall include individual family service plans (IFSP's), individual education programs (IEP's), and transition plans for children across disabilities developed in partnership with family members.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Designs activity-based learning experiences that are developmentally and individually appropriate for the child and are based on appropriate assessment of the child.

2. Makes provisions for the special needs of children who have unique talents, learning and developmental needs, or specific disabilities.

3. Plans for a healthy and safe environment for children with appropriate health and safety precautions during activities and incorporating health and safety into the curriculum.

4. Develops curricula and focuses instruction on the developmental needs of the children and Kentucky's learning goals and valued outcomes.

5. Designs opportunities for positive guidance and self-regulation of the child including effective strategies for addressing challenging behaviors through analysis of communicative intent, use of nonaversive intervention strategies, and systematic implementation.

6. Links developmental learning experiences and strategies with cultural, social, and family diversity.

7. Incorporates knowledge and strategies from multiple disciplines and other service plans (e.g., health care, social services) into the design of intervention strategies.

8. Incorporates family resources, priorities, and concerns into the plan.

9. Plans for current developmental and learning experiences and strategies and relates those to the next educational setting for the child and family.

10. Designs creative and appropriate use of technology to enhance learning and participation, control of the environment, and communication abilities including adaptive and assistive technology.

11. Selects and uses learning strategies and resources including materials, classroom furnishings, and community resources that are developmentally and individually appropriate for the child.

12. Implements child-oriented strategies to meet the individual needs of children including the development of communication systems (symbolic and nonsymbolic) for children.

13. Provides a stimulus-rich indoor and outdoor environment for children using materials, media, and technology to enhance learning.

14. Informs families about legal rights and procedures regarding children who have disabilities or meet income or other eligibility guidelines for services.

15. Identifies resources essential to the accomplishment of the management task or objective.

(2) Valued Educator Outcome II.

(a) The early childhood educator shall create appropriate learning environments for infants, toddlers, preschool children, and kindergarten children that are supportive of developmental needs of the age group and Kentucky's Learning Goals and Valued Outcomes. The early childhood educator shall provide developmental and learning activities in classroom and home settings, and in other settings, such as other preschools, child care programs, and hospitals. Within these settings, the learning context may include individual child activities, parent-child activities, small groups, and large groups. The early childhood educator shall create appropriate learning environments for children with diverse abilities including children with and without disabilities.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Facilitates development and actively involves children at a high level of engagement in developmentally and individually appropriate learning activities within the contexts of play, ongoing care routines, daily living and nutritional experiences, transitions, systematic instructional situations, and natural experiences.

2. Focuses the attention of children and helps children make connections in basic skills or core concepts and processes through an integrated skills approach to all areas of child development: physical, emotional, social, aesthetic, cognitive, communicative, and adaptive behavior.

3. Identifies children's misconceptions; provides guidance; systematically provides additional learning cues, models, or assistance as needed; and, offers frequent feedback on progress toward learning outcomes.

4. Provides a stimulus-rich indoor and outdoor environment for children using materials, media, and technology to enhance learning.

5. Makes creative and appropriate use of materials, media and technology for learning including adaptive and assistive technology to enhance learning opportunities, communication skills, and to extend child control over the environment.

6. Manipulates antecedent and consequent conditions available in and appropriate to the child's natural environment for the purpose of encouraging appropriate child behavior through nonaversive techniques to foster self-control, self-discipline, and self-responsibility.

7. Uses activities which actively engage children in cooperative learning in multiage, multiability groups for learning and for development of interpersonal skills and peer relationships.

8. Adapts the learning environment for inclusion of children with

and without disabilities, special health care needs, and emotional needs.

9. Facilitates positive and supportive interactions between children and adults including staff, parents, and primary caregivers and promotes self-management and self-regulation.

10. Uses physical, social, and temporal aspects of the environment to engage children and maximize learning and development with adjustments as the situation demands.

11. Recognizes diversity as a strength within the group or class or among families, shows consistent sensitivity to gender, social, and cultural differences, and respects individual differences.

12. Operates within legal and ethical guidelines and adheres to high standards.

(3) Valued Educator Outcome III.

(a) The early childhood educator shall introduce, implement, facilitate, and manage development and learning for infants, toddlers, preschool children, and kindergarten children to promote growth toward developmental needs of the age group and Kentucky's Learning Goals and Valued Outcomes. The early childhood educator shall implement instruction in classroom and home settings, through itinerant services, and in other settings such as day care, other preschools, and hospitals. The early childhood educator shall implement instruction for young children with diverse abilities including children with and without disabilities.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Facilitates development and actively involves children at a high level of engagement in developmentally and individually appropriate learning activities within the contexts of play, ongoing care routines, daily living and nutritional experiences, transitions, systematic instructional situations, and natural experiences.

2. Incorporates knowledge and strategies from multiple disciplines and other service plans (e.g., health care, social services) into the design of intervention strategies.

3. Focuses the attention of children and helps children make connections in basic skills or core concepts and processes through an integrated skills approach to all areas of child development: physical, emotional, social, aesthetic, cognitive, communicative, and adaptive behavior.

4. Implements child-oriented strategies to meet the individual needs of children including the development of communication systems (symbolic and nonsymbolic) for children.

5. Incorporates family-centered activities as a part of the learning environment.

6. Links development and learning with the child's prior knowledge, experiences, and cultural background and makes provisions for diversity in the following areas: selection of materials; environment; activities; communication modes; and child response modes.

7. Identifies children's misconceptions, provides guidance, systematically provides additional learning cues, models, or assistance as needed, and offers frequent feedback on progress toward learning outcomes.

8. Uses instructional practices that are pedagogically sound and legally defensible.

9. Involves children in multiability groups for learning activities with adaptations as needed for materials or curriculum, personal assistance, and appropriate positioning and strategies for overcoming environmental barriers for children with physical disabilities.

10. Makes creative and appropriate use of materials, media and technology for learning including adaptive and assistive technology to enhance learning opportunities, communication skills, and to extend child control over the environment.

11. Manipulates antecedent and consequent conditions available in and appropriate to the child's natural environment for the purpose of encouraging appropriate child behavior through nonaversive techniques to foster self-control, self-discipline, and self-responsibility.

12. Facilitates positive and supportive interactions between children and adults including staff, parents, and primary caregivers and to promote self-management and self-regulation.

13. Uses physical, social, and temporal aspects of the environment to engage children and maximize learning and development with adjustments as the situation demands.

14. Supports and assists the family in articulating priorities, concerns, and family resources that promote the child's development.

15. Demonstrates sensitivity to differences in family structures, processes, social and cultural backgrounds including special issues related to poverty, disability, and emotional needs of children.

16. Specifically communicates options for programs and services for the child at the next level and assists the family in identifying activities and resources to facilitate transition.

17. Identifies the outcome or goal of the management task or objective.

18. Uses problem-solving and participatory group processes to address management problems.

19. Establishes appropriate time lines for completion of management tasks.

(4) Valued Educator Outcome IV.

(a) The early childhood educator shall assess children's cognitive, emotional, social, communicative, adaptive, and physical development; organize assessment information; and communicate the results appropriate to the purpose of the assessment. Assessment purposes shall include:

1. Determining learning results;
2. Developmental screening;
3. Program planning;
4. Eligibility for disability services;
5. Program evaluation;
6. Progress on IFSP's and IEP's; and
7. Needs for transition to the next educational setting or program.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Uses multiple assessments, measures, and sources of data about the child with adaptations for sensory and physical impairments (e.g., observations of the child in relation to environments, interpersonal interactions, checklists, interviews, anecdotal records, norm- and criterion-referenced assessments, play-based assessments, and portfolios of
sample performance tasks);

2. Uses appropriate child assessment instruments or procedures based on the purpose of assessment that are consistent with established criteria and standards;

3. Involves families actively as team members and promotes family and child self-assessment by helping families and children articulate their own strengths, concerns, priorities, and resources;

4. Collects assessment data in a systematic way, records child performance, and maintains up-to-date records of children's progress with appropriate use of technology to support these activities;

5. Organizes assessment data and communicates results to the team, child and family members in a user-friendly format and process and uses indicators of progress that all team members and parents understand;

6. Specifically communicates options for programs and services for the child at the next level and assists the family in identifying activities and resources to facilitate transition;

7. Evaluates child development and learning in a way that is sensitive to cultural backgrounds; and

8. Applies expert opinion found in guidelines and standards prescribed or mandated by state, national organizations, and learned societies to evaluate progress.

(5) Valued Educator Outcome V.

(a) The early childhood educator shall reflect on and evaluate teaching and learning situations, learning environments, and programs for infants, toddlers, preschool children, kindergarten children, and their families. This shall include learning situations and programs

that are provided in relation to an IFSP or an IEP and by the early childhood educator, a teaching assistant or other staff member, the family, or other caregiver.

(b) Performance criteria shall include the extent to which the early childhood educator's evaluation:

1. Accurately articulates and assesses the learning situation or program and develops specific ideas and suggestions for improvement of the development program or learning environment with respect to:

a. The child's level of development and cultural background.

b. Developmental levels and learning outcomes for the child.

c. Developmentally and individually appropriate instruction.

d. The child's natural environment for learning.

e. Positive guidance and self-direction.

f. Active exploration and interaction.

g. Use of time, space, materials, technology, and human resources (e.g., peers, family, community);

2. Analyzes and evaluates the effect of the developmental program, learning environment, and family services on children as individuals and as groups of children;

3. Identifies priority activities for proficient performance and facilitates the development of learning experiences for assistants, staff, and volunteers.

(6) Valued Educator Outcome VI.

(a) The early childhood educator shall collaborate and consult with the following to design, implement, and support learning programs for children: staff in a team effort; volunteers; families and primary caregivers; other educational, child care, health and social services providers in an interagency and interdisciplinary team; and, local, state, and federal agencies.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Uses effective team membership and interpersonal skills to facilitate the collaborative team effort, articulates the purpose and scope of the collaborative effort, takes on appropriate roles (e.g., leader, follower, advocate, team teacher), and facilitates successful closure to collaborative events.

2. Involves parents as equals on the team.

3. Involves the appropriate persons and agencies to address the situation, problem, or task.

4. Uses information, skills, and applications learned in the interdisciplinary, collaborative team process to facilitate child development and learning including embedding opportunities for child participation and instruction in self-care and health related routine; uses appropriate orthopedic, prosthetic, and other assistive and adaptive equipment, and appropriately positions and handles students with physical disabilities.

5. Demonstrates an open mind to alternative perspectives, encourages contributions from different persons, sources and disciplines, and shows sensitivity to differences in roles, disciplines, service delivery models, social and cultural backgrounds.

6. Collaborates effectively with families and personnel to support successful transition of children.

7. Implements a range of family-oriented services based on identified resources, priorities, and concerns (e.g., information on community resources in child care, food stamps, health care, and disability services; support; referral; education and training).

8. Applies adult learning principles and processes in providing parents with training in child development, health, and safety.

9. Demonstrates use of ongoing, varied, and two (2) way communication strategies with family members (e.g., conferences, newsletters, daily notes, handbooks).

10. Serves as a member of an interdisciplinary team to make appropriate referrals based on screening and observation and to provide functional and appropriate assessments for diagnostic and programming purposes (IEPs and IFSPs).

11. Writes appropriate and functionally-based IFSPs and IEPs with various team members including annual and short-term objectives based on child assessment data.

12. Clearly articulates child learning and developmental outcomes to assistants, staff, and volunteers.

13. Promotes self-direction and applies adult learning principles and processes in training and supervision of assistants, staff, and volunteers.

14. Assesses the knowledge and performance levels of assistants, staff, and volunteers with sensitivity to social and cultural differences.

15. Identifies priority activities for proficient performance and facilitates the development of learning experiences for assistants, staff, and volunteers.

16. Provides feedback and evaluates performance in collaboration with the assistant staff or volunteer and facilitates the development of professional growth plans.

(7) Valued Educator Outcome VII.

(a) The early childhood educator shall engage in self-evaluation of teaching and management skills and participate in professional development to improve performance. This shall include the following performance areas:

1. Designing and planning developmental and learning activities;

2. Creating learning environments;

3. Implementing and managing activities;

4. Assessing children's learning development;

5. Evaluating learning situations and environmental programs; and

6. Collaborating with colleagues, parents, and others.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Provides documented evidence and articulates personal performance levels with respect to valued educator outcomes in paragraph (1)1 through 6, sensitivity to differences in social and cultural backgrounds, and identifies strengths and priorities for growth;

2. Articulates a professional development plan that has the potential to expand the personal repertoire of skills and strategies with respect to specific performance areas;

3. Shows documented evidence of growth and increased capacity to address specific areas of performance;

4. Demonstrates professional growth through professional organizations;

5. Critically reviews and applies research and best practice information in the program; and

6. Provides feedback and evaluates performance in collaboration with the assistant staff or volunteer and facilitates the development of professional growth plans.

JANICE WEAVER, Chair

APPROVED BY AGENCY: June 21, 1993

FILED WITH LRC: July 16, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on September 21, 1993, 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 September 16, 1993, 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 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.

Contact Person: Dr. Roland Goddu, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, (502) 564-4606.

REGULATORY IMPACT ANALYSIS

Agency Contact: Akeel Zaheer

(1) Type and number of entities affected: 176 school districts and approximately 370 early childhood teachers will be impacted. All candidates for this certificate will be required to meet certification standards outlined in this regulation. Institutions of higher education which offer teacher preparation programs leading to early childhood certification will have to meet program approval standards.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effect upon competition: None

(b) Reporting and paperwork requirements: Candidates must file appropriate applications and local district maintain records on personnel qualifications. Institutions of higher education must seek approval for offering certification programs.

(2) Effects on the promulgating administrative body: Office of Teacher Education and Certification must approve certification programs being offered by Institutions of Higher Education and Division of Certification must review applications, issue or deny certificate, and maintain records on all transactions.

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Office of Teacher Education and Certification must maintain records on all approved programs of preparation and maintain records and issue certificates.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Qualified instructional personnel are required for the educational, emotional, and physical welfare of public school children.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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. Certification requirements are uniformly applicable to all individuals.

SCHOOL FACILITIES CONSTRUCTION COMMISSION

750 KAR 2:010. Education technology funding program guidelines.

RELATES TO: KRS Chapter 157

STATUTORY AUTHORITY: KRS 157.650-157.665

NECESSITY AND FUNCTION: The School Facilities Construction Commission is to promote a partnership between the state and local public school districts to help meet the educational technology needs of Kentucky's students. The General Assembly has appropriated funds for administrative support and for offers of assistance to local public school districts. This administrative regulation describes procedures and the guidelines the School Facilities Construction Commission will utilize in determining the eligibility and level of participation for each local public school district, for making offers of assistance to school districts, for verifying local public school district funding matches, and for the accumulation of credits by local public school districts that maintain their eligibility.

Section 1. Eligibility. (1) The School Facilities Construction Commission (the "Commission") shall use the statement of need as certified by the State Board for Elementary and Secondary Education (the "State Board") in determining eligibility and the required rate of participation for each local public school district.

(2) All local public school districts shall have an approved technology plan by July 1, 1993. Each district's plan shall contain a description of unmet technology needs of the district.

Section 2. Rate of Participation. The rate of state participation shall be certified by the state board to the commission. State funds shall be transferred to the local districts based upon a certification and approval of the commission, subject to the approval of the Secretary of Finance and Administration. The amount of assistance available for each local school public district shall be determined by the formula contained in KRS 157.660(1).

Section 3. Sources of Local Matching Funds. Local public school districts may match the state offer of assistance from their general fund; from the proceeds of revenue bonds or notes issued on behalf of a district to purchase technology equipment supported by the district's general fund and which are to be retired within three (3) years from the date of issuance; vendor or third party lender leases; or from interest earned by a district on any school building construction account, provided that such interest is not already committed for expenditure on the construction project.

Section 4. Offers of Assistance. (1) Funds available within the Education Technology Escrow Account shall be distributed to local school districts for installation of the Kentucky Education Technology System ("KETS") through the cooperative program established by KRS 157.650 to 157.665, and as provided by Section 2 of this administrative regulation. Subject to approval by the Secretary of the Finance and Administration Cabinet, approximately one-half (1/2) of available funds shall be allocated to local school districts each year during the 1992-94 biennium.

(2) Upon certification of the rate of participation to the commission, the commission's executive director shall notify each eligible district in writing of the amount the district is entitled to receive, and the conditions the district must meet, if it accepts the offer of assistance. Conditions districts must meet to be eligible for assistance are: the district has an unmet technology need as defined in KRS 157.615(15), or an obligation to pay for technology acquired before April 2, 1992; commitment by the district of local school funds equal to the amount of state assistance available to the district under the formula in KRS 157.660(1); and except as provided by KRS 157.655(2), during the 1992-94 biennium, expenditure of state and local technology funds in the priority order listed in the district's technology plan as approved by the state board; and, the sequence of events and deadlines to be met by the local school district in fulfilling its educational technology needs.

Section 5. Acceptance of Offers of Assistance. (1) The local board of education shall notify the commission in writing whether it accepts an offer of assistance within sixty (60) days after receipt of the offer of assistance. The local board's response shall indicate how much of the amount of the offer that the district plans to accept. If a school district does not have local matching funds available when the commission's offer of assistance is received, the district may accumulate credits for up to three (3) years from the date of the offer of assistance. If a district does not respond within sixty (60) days after receipt of the offer of assistance it shall be deemed to have rejected the offer of assistance and the amount of the offer shall be redistributed to remaining eligible districts. Upon written request received from a district within the original sixty (60) day period, a single thirty (30) day extension in responding to an offer of assistance may be granted by the executive director.

(2) Local school district shall provide to the commission copies of their boards' minutes reflecting acceptance of offers of assistance.

Except as provided in subsection (3) of this section, upon acceptance of offers of assistance, each local school district shall establish in the district's depository bank an "Education Technology Matching Funds Restricted Account", which shall bear interest on the balances in the account. All interest received on the accounts shall be applied to meet educational technology needs in the school district. The districts shall provide the commission with a copy of a bank deposit ticket verifying deposit of the local matching funds in the account.

(3) If a district receives a grant or grants from private sources to serve as the local matching funds, and as a condition of the grant the grant funds are deposited in a trust or similar bank account, the district may submit to the commission a copy of a bank statement showing that the local matching funds are available for expenditure from such account, in lieu of opening an Education Technology Restricted Fund Account.

Section 6. Bond Issuance Procedures. The commission shall provide technical advice with reference to the issuance of bonds, or entering into lease agreements to meet district technology needs, to all local school districts who request such advice.

JOE WALTERS, Chairman

APPROVED BY AGENCY: August 12, 1993

FILED WITH LRC: August 13, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993, at 2 p.m., in Room 285, Capitol Annex Building, Frankfort, Kentucky. The hearing is open to the public. Persons interested in attending this hearing shall notify the Commission in writing by September 16, 1993 five days prior to the hearing, of their interest in attending the hearing. Persons attending the hearing will be given an opportunity to comment on the proposed administrative regulation. No transcript of the public hearing will be prepared unless a written request for one is received, however, the requester will be responsible for paying the cost of transcription. If no one has advised the commission five days or more prior to the hearing that they plan to attend, the hearing may be cancelled. Persons who do not wish to attend the public hearing may still submit written comments on the proposed regulation for consideration by the commission. Send written notification of intent to attend the public hearing, or written comments on the proposed administrative regulation to: Carrie Saufley, School Facilities Construction Commission, Room 268, Capitol Annex Building, 702 Capitol Avenue, Frankfort, Kentucky 40601, (502) 564-5582.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carrie Saufley

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected:

1. First year: FY 1993, $20 million (matched locally by districts).

2. Continuing costs or savings: FY 1994, $19 million (matched locally by districts).

3. Additional factors increasing or decreasing costs (Note any effects upon competition): Depends on future legislative appropriations.

(b) Reporting and paperwork requirements: Fund utilization planning form, bank deposit copies, approved board minutes, internal tracking of all expenditures subject to audit.

(2) Effects on the promulgating administrative body: Administration of program with the intent of House Bill 698 and House Bill 1 followed. One staff person is responsible for the Education Technology Funding Program with no future plans to hire any additional staff.

(a) Direct and indirect costs or savings:

1. First year: FY 1993, $20 million available to local districts.

2. Continuing costs or savings: FY 1994, $19 million available to local districts.

3. Additional factors increasing or decreasing costs: Depends on future legislative appropriations.

(b) Reporting and paperwork requirements: Computer tracking of all district information; various completed forms for wire transfers; correspondence with other interested agencies and departments (GOPM, Division of Accounts, Department of Education, LRC, Office of Education Accountability, and the Finance and Administration Cabinet).

(3) Assessment of anticipated effect on state an local revenues: For state revenues, this program will only remain viable through additional legislative appropriations. For local revenue, additional funds must be raised through the general fund, local bond issues not to exceed three years, third party lease agreements not to exceed three years, or left over interest money from a construction account which remains situation specific.

(4) Assessment of alternative methods; reasons why alternative were rejected: No alternative methods were considered. This program is a strand of KERA and was initiated by the lawmakers of the Commonwealth of Kentucky.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: There is no conflict, overlapping, or duplication relating to this administrative regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Again, there is no conflict, overlapping, or duplication relating to this administrative regulation.

(6) Any additional information or comments: House Bill 698 requests that the School Facilities Construction Commission establish regulation.

Tiering: Was tiering applies? Yes, tiering has been applied. House Bill 698 established the Education Technology Funding Program within the SFCC and the General Assembly expressed its commitment to promote a partnership with the state and local public school district's to meet the education technology needs of Kentucky's students in a manner which would insure an equitable distribution of funds. This law only applies to the Commonwealth of Kentucky's 176 local school districts.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims

803 KAR 25:092. Workers' Compensation pharmacy fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.735

NECESSITY AND FUNCTION: KRS 342.035 requires the Workers' Compensation Board to periodically promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community. The increased security of payment afforded by the Workers' Compensation Act may be taken into consideration in determining what fees are reasonable. KRS 342.735 requires the board to establish administrative regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate charges for pharmaceuticals provided pursuant to KRS 342.020, and to expedite the payment of this class of medical expense benefits.

Section 1. Definitions. (1) "Brand name" has the meaning set forth in KRS 217.814(1).

(2) "Equivalent drug product" has the meaning set forth in KRS

217.814(5).

(3) "Generic name" has the meaning set forth in KRS 217.814(2).

(4) "Hospital" has the meaning set forth in 803 KAR 25:091, Section 1(1).

(5) "Practitioner" means any person licensed under the professional laws of Kentucky or any other state to prescribe and administer medicine and drugs.

(6) "Wholesale price" means the average wholesale price charged by wholesalers at a given time.

Section 2. Payment for Pharmaceuticals. (1) An employee entitled to receive pharmaceuticals under KRS 342.020 may request and require that a brand name drug be used in treating the employee. Unless the prescribing practitioner has indicated that an equivalent drug product should not be substituted, an employee who requests a brand name drug shall be responsible for payment of the difference between the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock and the brand name drug wholesale price at the time of dispensing.

(2) Any duly licensed pharmacist dispensing pharmaceuticals pursuant to KRS Chapter 342 shall be entitled to be reimbursed in the amount of the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock, at the time of dispensing, plus a five (5) dollar dispensing fee.

(3) If an employee's prescription is marked "Do Not Substitute," the dispensing pharmacist shall be entitled to reimbursement in an amount equal to the brand name drug wholesale price, at the time of dispensing, plus a five (5) dollar dispensing fee.

Section 3. Disputes; Applicability. (1) Any dispute arising under this administrative regulation shall be resolved pursuant to 803 KAR 25:012.

(2) This administrative regulation shall apply to prescriptions dispensed to a workers' compensation patient by a hospital pharmacy if the patient is not otherwise being treated or obtaining medical care from the hospital.

(3) This administrative regulation shall not apply to prescriptions dispensed by a hospital pharmacy, of a hospital regulated pursuant to 803 KAR 25:091, to a workers' compensation patient receiving medical treatment or care from the hospital on an inpatient or outpatient basis.

(4) Any insurance carrier, self-insured employer or group self-insured employer may enter into an agreement with any pharmacy to provide reimbursement at a lower amount than that required in this administrative regulation.

Section 4. Balance Billing. No pharmacy filling a prescription covered under KRS 342.020 shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge in excess of that permitted under this administrative regulation, except as provided in Section 2(1) of this administrative regulation.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: July 23, 1993

FILED WITH LRC: July 28, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m., on September 28, 1993. Individuals interested in attending this hearing shall notify this agency in writing by September 23, 1993, 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: J. Gary Lee, Attorney, Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency contact person: J. Gary Lee

(1) Type and number of entities affected: 802 KAR 25:092 (the pharmacy fee schedule) will affect all of the 4,266 licensed pharmacists in the Commonwealth of Kentucky who dispense medication to individuals receiving medical treatment pursuant to KRS Chapter 342.

(a) Direct and indirect costs or savings to those affected:

1. First year: The actual savings which will result from the enactment of this regulation are unknown as various pharmacies charge various dispensing fees; however it is anticipated that this regulation will result in a substantial savings to a medical payment obligor's participation under the Kentucky Workers' Compensation Act.

2. Continuing costs or savings: The continued savings should be the same on a yearly basis.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no known additional factors which will increase or decrease costs. There should not be any effects on competition as all pharmacies prescribing medication pursuant to KRS Chapter 342 will receive the same rate.

(b) Reporting and paperwork requirements: There are no known reporting or paperwork requirements, except for the customary requirement that a billing be sent to the medical payment obligor for payment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None known.

2. Continuing costs or savings: None known.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: None known.

(3) Assessment of anticipated effect on state and local revenues: This regulation should not have any effect on state and local revenues.

(4) Assessment of alternative method; reasons why alternatives were rejected: All states that have pharmacy fee schedules were reviewed and it was found that every state used the same method to regulate pharmacy charges under their respective workers' compensation acts. Therefore, this regulation is the same as our sister states and there were no alternative methods to be rejected.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation overlaps, but does not conflict with KRS 217.814 through 217.822.

(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: Is tiering applied? Tiering is not applicable as this regulation applies equally to all pharmacists who prescribe medical pursuant to KRS Chapter 342.

PUBLIC PROTECTION AND REGULATION CABINET
Department for Financial Institutions

808 KAR 10:290. Assistant representative.

RELATES TO: KRS Chapter 292
STATUTORY AUTHORITY: KRS 292.500(3), Executive Order 93-518
NECESSITY AND FUNCTION: To allow registered agents to better utilize their time and expertise by permitting sales assistants to perform the clerical duties of receiving unsolicited orders and giving market quotes to customers.

Section 1. All assistant representatives - order processing shall comply with the following requirements:
(1) All assistant representatives - order processing shall be registered with the Division of Law and Regulatory Compliance. Before their registrations can become effective, they shall demonstrate their competence in the law of securities by taking and passing the Series 63 Examination administered by the National Association of Securities Dealers, Inc. and the Series 11 Examination administered by the National Association of Securities Dealers, Inc.
(2) Any persons whose most recent registration as an assistant representative - order processing has been terminated for a period of two (2) or more years immediately preceding the date of receipt by the Division of Law and Regulatory Compliance of a new application shall complete the requirements set out in subsection (1) of this section.

Section 2. Assistant representatives - order processing shall not solicit transactions or new accounts on behalf of the broker-dealer, render investment advice, make recommendations to customers regarding the appropriateness of securities transactions, or effect transactions in securities markets on behalf of the broker-dealer. A person registered as an assistant representative - order processing shall not be registered concurrently in any other capacity.

Section 3. A broker-dealer shall only compensate an assistant representative - order processing on an hourly wage or salaried basis and shall not in any way, directly or indirectly, relate his or her compensation to the number or size of unsolicited customer orders accepted by the assistant representative - order processing for submission for execution by the broker-dealer or the number or size of the orders actually executed for customers by the broker-dealer. This provision shall not prohibit a person registered in this capacity from receiving bonuses or other compensation based on a broker-dealer's profit sharing plan or similar arrangement.

Section 4. The activities of assistant representatives order processing shall only be conducted at a business location of the broker-dealer that is under the direct supervision of an appropriately registered principal.

EDWARD B. HATCHETT, JR., Commissioner
APPROVED BY AGENCY: August 10, 1993
FILED WITH LRC: August 13, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1993 at 10:15 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 1993, five days prior to the hearing, of their intent to attend. If not notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Lewis Kelly, Division of Law and Regulatory Compliance, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, (502) 564-3390.

REGULATORY IMPACT ANALYSIS

Agency Contact: Lewis Kelly
(1) Type and number of entities affected: Approximately 50 broker-dealers could be affected.
(a) Direct and indirect costs or savings to those affected: There would be no 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: Minimal
(a) Direct and indirect costs or savings: Minimal
1. First year: Minimal
2. Continuing costs or savings: Minimal
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: There would be a slight increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: Very minimal.
(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: 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. Not applicable.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:350. Boarding homes.

RELATES TO: KRS 216B.300-216B.320, 216B.990
STATUTORY AUTHORITY: KRS 216B.305
NECESSITY AND FUNCTION: KRS 216B.305 mandates that the Cabinet for Human Resources adopt standards through administrative regulation relating to boarding homes. This administrative regulation provides the standards for the operation of boarding homes.

Section 1. Definitions. (1) "Home" means a boarding home.
(2) "Registrant" means the owner of the home.
(3) "Manager" means person responsible for the day-to-day operation of the home.
(4) "Resident" means any person, including a boarder as defined in KRS 216B.300(3), other than the registrant, manager or person related to the registrant or manager, who is living in the home. The resident may require some minimal degree of assistance or supervision, but not to the level of care provided by family care homes or personal care homes.
(5) "Potentially hazardous food" means any food or ingredient, natural or synthetic:
(a) In a form capable of supporting:
1. The rapid and progressive growth of infections or toxigenic microorganisms; or

2. The slower growth of Clostridium botulinum.

(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 botulinum cannot occur.

(6) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;

(b) Family child care home;

(c) Adult day care center;

(d) Adult day health care facility;

(e) Family care home;

(f) Group home for the mentally retarded or developmentally disabled;

(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospital;

(h) Intermediate care facility;

(i) Nursing facility;

(j) Nursing home;

(k) Personal care home;

(l) Skilled nursing facility;

(m) Psychiatric residential treatment facility;

(n) Child caring facility;

(o) Child placing agency;

(p) Rural primary care hospital;

(q) Alzheimer nursing home;

(r) Youth camp;

(s) Boarding home; or

(t) Alternate intermediate service for the mentally retarded or developmentally delayed.

Section 2. Scope of Operations and Services. Boarding homes are operated and maintained to provide residential and dining services for at least three (3) individuals in accordance with KRS 216B.300(4).

Section 3. Registration Procedure. (1) An applicant seeking initial registration or a registrant seeking renewal shall:

(a) Submit an application on forms that the cabinet requires to the Department for Health Services, Health Services Building, 275 East Main St., Frankfort, KY, 40621; and

(b) Pay a registration fee of $100.

(2) Upon receipt of an application, the cabinet or its agents shall make an inspection of the home to determine compliance with the provisions of KRS Chapter 216B and this administrative regulation. When inspection reveals that the applicable requirements of KRS Chapter 216B and this administrative regulation have been met, registration shall be issued to the applicant by the cabinet.

(3) A receipt of registration shall be sent to the registrant.

(4) Unless renewed, initial registration shall expire on March 31 following the date of registration, as shown on the receipt of registration sent to the registrant, and every March 31 thereafter.

Section 4. Operation and Management of Boarding Homes Whose Residents Do Not Meet the KRS 216B.300(3) Definition of "Boarder". (1) The registrant shall be legally responsible for the operation of the home and for compliance with all federal, state and local laws and administrative regulations pertaining to the operation of the home.

(2) The manager shall be a literate adult, at least eighteen (18) years of age, who has general knowledge of the residents' physical and mental condition.

(3) The manager shall be the person directly responsible for the twenty-four (24) hour daily operation of the home or for delegating that responsibility to another individual meeting criteria in subsection (2) of this section. The name of that individual to whom the responsibility may be designated shall be in writing and provided to the agents of the cabinet inspecting the home.

(4) The manager shall maintain records, located on the premises and available for inspection by the cabinet or its agents, which contain the following information (typed or in ink) about each resident who does not meet the KRS 216B.300(3) definition of a "boarder":

(a) Name and sex.

(b) Date of birth.

(c) Previous place of residence.

(d) Attending physician, mental health professional, and dentist, if any, address and phone number for each.

(e) Next of kin or responsible person (or agency), address and telephone number.

(f) Amount charged per week or month by the home.

(5) The manager shall have phone numbers of a hospital, an ambulance service, fire department, and a physician for emergencies posted by the telephone in large legible print.

(6) The manager shall have a written procedure for obtaining emergency services.

(7) All prescription medications taken by residents who do not meet the KRS 216B.300(3) definition of a "boarder" shall be noted in writing by the manager to include the date, time and dosage of the medication. The manager shall keep the original in a file and make it available to the cabinet or its agents upon request.

(8) The manager shall make a written report of any accident involving a resident, any incident involving a resident's health, welfare or safety, and any death of a resident. The manager shall keep the original in a file and make it available to the cabinet or its agents upon request.

(9) The manager shall provide for resident rights pursuant to KRS 216B.303.

(10) The registrant shall request and review all criminal conviction information for any applicant for employment or volunteer services from the Justice Cabinet prior to employing the applicant or utilizing the volunteer.

(11) Initial registrations may be denied and existing registrations may be revoked if the applicant for registration or the registrant has:

(a) Been convicted of a crime relating to abuse, neglect or exploitation of a child or an adult;

(b) Abused, neglected or exploited a child or an adult;

(c) Been listed on the Nurse's Aide Abuse Registry by the Office of the Inspector General; or

(d) Had a human services center or facility registration, certification, permit or license denied or revoked or voluntarily forfeits their certification, registration, license or permit after the cabinet initiates denial or revocation action.

(12) The manager shall report all suspected cases of abuse, neglect, or exploitation of adults or children to the cabinet pursuant to KRS Chapters 209 and 620.

(13) If a person who has job duties is known or is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job, the individual shall not perform these duties until such time as the infectious condition can no longer be reasonably expected to be transmitted. Disagreement regarding this requirement between the

home and the individual involved shall be resolved by the individual's physician.

(14) The registration from the cabinet shall be posted in a conspicuous place in the home.

Section 5. Services to be Provided by Homes Whose Residents Do Not Meet the KRS 216B.300(3) Definition of "Boarder". (1) Basic services.

(a) All homes shall ensure that residents obtain basic room and board services.

(b) The home shall provide each resident with a lockable bureau or cupboard for storage of personal belongings.

(c) Mattress pads or covers shall be used on all mattresses. Beds, mattresses, springs, slats, mattress pads and cover shall be sanitary and in good repair. Each bed shall be provided with two (2) sheets; and one (1) pillow and one (1) pillowcase for each resident. Sheets and pillowcases shall be kept clean and changed at least once per week, or more often if necessary, or when there is a new resident. All beds shall be supplied with sufficient blankets or coverings to keep the resident warm.

(d) It shall be the responsibility of the manager, if a resident is unable due to an accident or acute illness, to obtain the services of a physician.

(e) Residents shall not require a degree of care exceeding the skill of the operator to provide.

(f) Prescription drugs for residents who do not meet the KRS 216B.300(3) definition of "boarder" shall be kept in a locked cabinet.

(2) Communicable diseases.

(a) The manager shall not allow individuals infected with the following diseases to reside in the home unless the individual's attending physician certifies in writing that the condition of the individual is not communicable to others in the home environment: anthrax, cammpylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tuberculosis, tularemia, and typhus. If an attending physician is in doubt regarding the communicability of a individual's condition, the physician may contact the Department for Health Services.

(b) A home may admit a (noninfectious) tuberculosis patient under continuing medical supervision for the patient's tuberculosis disease.

(c) If a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents, the manager shall assure that a physician is contacted and that appropriate measures are taken on behalf of that resident and the other residents in the home.

(3) Dietary services for residents who do not meet the KRS 216B.300(3) definition of a "boarder".

(a) Food supplies.

1. Food shall be in sound condition and safe for human consumption. Food shall be obtained from sources that comply with the applicable laws relating to food safety. The use of food that was not prepared in an approved food processing establishment is prohibited.

2. Fluid milk and fluid milk products used shall be pasteurized and shall comply with applicable law. Dry milk and milk products used shall be made from pasteurized milk and milk products. Raw milk shall not be provided or used in a home.

3. Only clean shell eggs meeting applicable grade standards, or pasteurized liquid, frozen, or dry eggs, or pasteurized dry egg products shall be used.

4. Only ice which has been manufactured with potable water and handled in a sanitary manner shall be used.

(b) Food protection.

1. Prepared, or served, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, unclean equipment or utensils, unnecessary hand contact, draining, or overhead leakage or condensation, dust, coughs and sneezes or other agents of public health significance.

2. 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 times of preparation or service.

3. Hermetically sealed (airtight) packages shall be handled so as to maintain product and container integrity.

4. Pets may be present on the premises, but shall not be permitted in the kitchen.

5. Laundry facilities.

a. In facilities that are initially licensed within one (1) year of the effective date of this regulation, laundry facilities may be located in the kitchen, but shall not be used during food preparation and service.

b. In facilities that are initially licensed more than one (1) year after the effective date of this regulation, laundry facilities shall not be located in the kitchen.

(c) Food preparation.

1. Food shall be prepared with the least 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.

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 and 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;

4. Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes;

5. Unpasteurized 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. Bainsmarie, warmers, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

7. Potentially hazardous foods shall be thawed:

a. In refrigerated units at a temperature not to exceed forty-five (45) degrees Fahrenheit; or

b. Under potable running water at a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period that shall not exceed that reasonably required to thaw the food; or

c. In a microwave oven only when the food will be immediately transferred to conventional cooking units 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 if the food is less than, or equal to, three (3) pounds.

(d) Food display and service.

1. Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by the use of packaging, or by the use of easily cleanable display cases, serving line or salad bar protector devices, covered containers for self-service, or by other effective means. Potentially hazardous food other than milk, cream, cream cheese, or yogurt shall not be provided for resident self-service in the home.

2. Condiments, seasonings and dressings for self-service use

shall be provided in individual packages, or in dispensers or containers except that, for table service, catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for resident use shall be provided in individual packages or in pour-type dispensers.

3. Ice for resident use shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination.

4. Once served to a resident, portions of leftover food shall not be reused or re-served except that nonpotentially hazardous packaged food, that is still packaged and is still in sound condition may be re-served. However, single-service creamers and completely wrapped pats of butter or margarine may be re-served if still packaged and in sound condition.

(e) Employee health and practices.

1. Employees engaged in food preparation, service and ware-washing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, after smoking, eating, or using the toilet, and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

2. Employees shall wear clean outer clothing.

3. 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.

4. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.

5. Employees shall consume food or use tobacco only in designated areas. Such designated areas shall not be located in food preparation areas or in areas where the eating or tobacco use of an employee may result in contamination of food, equipment, or utensils.

6. All employees shall wash their hands thoroughly with soap and warm water in an adequate hand-washing facility before starting work and as often as necessary to remove soil and contamination. The hands of all employees shall be kept clean, while engaged in handling of food and food contact surfaces.

(f) Equipment and utensils.

1. Equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and 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, taste, nor contribute to the contamination of food.

2. Safe plastic or safe rubber or safe rubber-like materials shall be resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, and shall be of sufficient weight and thickness to permit cleaning and sanitizing by normal ware-washing methods.

3. Single-service articles shall not be reused.

4. All equipment and utensils shall be maintained in good repair.

(g) Equipment and utensils/cleaning and sanitization.

1. Food utensils and equipment shall be stored in a manner to avoid contamination.

2. Food contact surfaces and sinks shall be smooth and easily cleanable.

3. Food contact equipment, surfaces, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use.

4. Sinks, basins or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

5. Equipment and utensils shall be preflushed or prescrapped and, when necessary, presoaked to remove food particles and soil.

6. Manual cleaning and sanitizing shall be conducted as follows:

a. For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three (3) compartments shall be provided and used. The cabinet may allow the use of compartments other than sinks.

b. All five (5) steps of the ware-washing process shall be completed as follows:

(i) Prerinsing or scraping;

(ii) Application of cleaners for soil removal;

(iii) Rinsing to remove any abrasives and remove or dilute cleaning chemicals;

(iv) Sanitization; and

(v) Air drying and draining.

c. A sanitizing method approved by applicable provisions of the state retail food code shall be used.

d. Wash, rinse and sanitizing solution shall be maintained in a clean condition.

e. The washing solution shall be maintained at a temperature of 110 degrees Fahrenheit or above, or as specified on the manufacturer's label.

f. When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted by law, and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used at least once each business day and each time the sanitizing solution is changed.

7. Mechanical cleaning and sanitizing shall be conducted as follows:

a. Commercial dishwashers must comply with applicable provisions of the state retail food code.

b. A domestic or home-style dishwasher may be used provided the following performance criteria are met:

(i) The dishwasher shall effectively remove physical soil from all surfaces of dishes.

(ii) The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.

(iii) The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150 degrees Fahrenheit after the final rinse and drying cycle.

(iv) The dishwasher shall be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing kitchen facilities' utensils and tableware; a copy of the instructions shall be available on the premises at all times.

8. There shall be sufficient area or facilities such as portable dish tubs and drain boards for the proper handling of soiled utensils prior to washing and of cleaned utensils after sanitization so as not to interfere with safe food handling, hand washing and the proper use of dishwashing facilities. Equipment, utensils and tableware shall be air dried.

(h) Water supply and sewage disposal.

1. Sufficient potable water for the needs of the establishment shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection.

2. Bottled and packaged potable water shall be obtained from a source that complies with applicable provisions of the Cabinet for Natural Resources and Environmental Protection, and the cabinet, and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water for consumer self-service shall be dispensed from the original container.

3. All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection, and the cabinet. Mop water shall not be disposed of in the dishwashing sink.

(i) Toilet facilities for employees.

1. Toilet facilities shall be installed pursuant to requirements of the state plumbing code, shall be conveniently located, and shall be accessible to employees at all times.

2. Bathrooms opening to the kitchen or dining area shall have adequate ventilation and a self-closing door. Ventilation may be provided by window(s) or by mechanical means. A soap dispenser and disposal towels shall be provided for hand washing in bathrooms used by food handlers.

3. Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

(j) Hand-washing facilities for employees.

1. Hand-washing facilities shall be installed pursuant to the requirements of the State Plumbing Code and shall be conveniently located in the food preparation area.

2. Each hand-washing facility shall be provided with hot and cold potable water tempered by means of a mixing valve or combination faucet.

3. A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand-washing facilities.

4. 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.

5. Hand washing shall take place at a hand-washing lavatory or designated service sink and not at food preparation sink or at a ware-washing sink.

(k) Insect and rodent control.

1. Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents or of flies, cockroaches, other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

2. Pesticides and rodenticides.

a. No person shall apply insecticides or rodenticides except as follows:

(i) In accordance with applicable requirements of the Kentucky Department of Agriculture's Pesticide Use and Application Act;

(ii) In accordance with the manufacturer's labeling; and

(iii) In such a way that food, food contact surfaces, and the supply of potable water are not contaminated.

b. No open pesticide or rodenticide bait boxes shall be used.

c. Pesticides, rodenticides and other toxic materials shall be stored apart from food, equipment, and utensils, and all containers of toxic material shall be clearly labeled for easy identification.

d. Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(l) Therapeutic diets. Special diets or dietary restrictions shall be medically prescribed and provided accordingly.

(m) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast.

(n) All food showing evidence of spoilage or infestation shall be disposed of immediately upon detection.

(4) Housekeeping and sanitation. Each home shall:

(a) Have openings to the outside which shall be effectively 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;

(b) Eliminate odors at their source by prompt and thorough cleaning of commodes and other obvious sources;

(c) Maintain the premises in such a manner as to prevent infestation by insects and rodents;

(d) Soiled clothing and linens shall be given immediate attention and shall be kept in a closed container. Once used, clothing or bedding shall be laundered before being used by another individual;

(e) 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 in accordance with the requirements of the cabinet; provided, however, if a public sewerage system subsequently becomes available, connections shall be made thereto and any other sewerage system shall be discontinued.

(f) Collect and dispose of all garbage, refuse, trash, and litter in compliance with applicable state and local laws and regulations. Garbage containers shall be made of metal or other impervious material, and shall be watertight and rodent proof, and shall have tight-fitting covers.

Section 6. Accommodations. Each home shall:

(1) Be safe and of substantial construction and comply with applicable state and local laws relating to location, zoning, plumbing, and sanitation;

(2) Provide lighting with a minimum illumination level of fifty (50) foot-candles for each hall, stairway, entryway, resident area, and bathroom; a minimum illumination level of thirty (30) foot-candles shall be required for kitchens;

(3) Have a water supply which is potable, adequate and from an approved public supply of a municipality or water district, if available. In the event a public water supply of a municipality or a water district is not available, the supply shall be developed and approved in accordance with applicable requirements of the Natural Resources and Environmental Protection Cabinet; provided, however, if a public water supply of a municipality or water district subsequently becomes available, connections shall be made thereto and any other supply shall be discontinued;

(4) Have an ample supply of hot and cold running water available at all times for general use. The water temperature at any tap shall not exceed 110 degrees Fahrenheit and all plumbing shall be installed pursuant to the State Plumbing Code;

(5) Have adequate toilet and bathing facilities conveniently located as required by the State Plumbing Code;

(6) Have adequate ventilation in all areas used by residents. Toilet rooms shall be vented to the outside, if there is no window. There shall be an exterior window which can be opened in each resident room;

(7) Assure that beds occupied by residents shall be placed so no resident may experience discomfort due to proximity to radiators, heat outlets, or exposure to drafts;

(8) Not use stacked beds;

(9) Have beds and mattresses that are no less than thirty-three (33) inches wide and six (6) feet long;

(10) Not house residents in rooms or detached buildings or other enclosures which have not been previously inspected and approved for resident use, or in basements not approved by the cabinet for sleeping quarters. Approved basements must have an outside door;

(11) Not be located in a house trailer or motor home;

(12) Provide a heating system which can maintain an even temperature and is capable of maintaining a minimum temperature of seventy-two (72) degrees Fahrenheit in resident-occupied areas under winter conditions and a maximum temperature of eighty-five (85) degrees under summer conditions; and

(13) Be able to accept a resident who uses a wheelchair by assuring that the resident is able to enter and exit the home and utilize the bathroom facility without assistance (i.e., ramps, railings,

etc.).

Section 7. Safety. Each home shall take appropriate precautions to ensure the safety of the residents and visitors by:

(1) Having all exterior grounds including sidewalks, steps, porches, ramps, and fences in good repair;

(2) Having all of the home's interior including walls, ceilings, floors, floor coverings, steps, windows, window coverings, doors, plumbing, and electrical fixtures in good repair;

(3) Having a fire control and evacuation plan;

(4) Having an adequate number of 2A10 B:C rated fire extinguishers located throughout the home with a minimum of one (1) per floor or level of the residence;

(5) Having a 40 B:C rated fire extinguisher located within each food preparation area in the home;

(6) Having a person in charge thoroughly oriented in the evacuation of the residents in the event of a fire; and

(7) Having smoke detectors located as follows:

(a) One (1) shall be located in each bedroom; and

(b) At least one (1) shall be located on each floor or level of the home.

Section 8. Complaint Procedures. (1) Complaints by registrants shall be directed to the appropriate agency.

(2) Every home shall conspicuously post a listing of agencies and their telephone numbers, including:

(a) The Protection and Advocacy Division of the Public Protection and Regulation Cabinet;

(b) The Adult Protective Services Division of the Department for Social Services;

(c) The health department of the county in which the home is situated; and

(d) The comprehensive care center for that area development district, and any other comprehensive care center that may serve residents in the home.

(e) The Division of Licensing and Regulation.

Section 9. Suspension of Registration. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the registrant or manager has interfered with the authorized agents of the cabinet in the performance of their duties, the registration may be suspended immediately upon notice to the registrant without a hearing. In such event the registrant may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this regulation, the cabinet or its agents may serve upon the registrant a written notice specifying the violation(s) in question and afford a reasonable opportunity to correct same. Whenever there is a failure to comply with any written notice issued under the provisions of this administrative regulation, the registrant shall be notified in writing that the registration 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 registrant within the ten (10) day period.

Section 10. Reinstatement of Suspended Registration. Any registrant may, at any time, make application for a reinspection for the purpose of reinstatement of the registration. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this administrative regulation, the registration shall be reinstated.

Section 11. Revocation of Registration. For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the registration 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 registrant in writing, stating the reasons for which the registration is subject to revocation and advising that the registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for a hearing is filed with the cabinet by the registrant, within the ten (10) day period.

Section 12. Hearings. The hearings provided for in this administrative regulation shall be conducted by the cabinet at a time and place designated by it. During the course of the hearing, an appellant shall be given the opportunity to hear evidence against him, to cross-examine any witness against him and to present evidence in his behalf. At the conclusion of the hearing, the cabinet shall make findings of fact and conclusions of law. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefore at the time a hearing is requested.

Section 13. 905 KAR 8:150, Board home registration, is hereby repealed.

WILLIAM M. GARDNER, Inspector General
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 9, 1993
FILED WITH LRC: August 12, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 21, 1993, 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 canceled unless interested persons notify the following office in writing by September 16, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Eric Friedlander, David Crane, Ralph Von Derau

(1) Type and number of entities affected: Indeterminable

(a) Direct and indirect costs or savings to those affected:

1. First year: $100 registration fee and $100 inspection fee for each registrant.

2. Continuing costs or savings: Same as above on an annual basis.

3. Additional factors increasing or decreasing costs: This will be different in each individual case. The regulation will impose new standards on those entities already operating as boarding homes. Some potential boarding homes will have difficulty meeting these requirements without some expenditures in the dietary area.

(b) Reporting and paperwork requirements: Since these are new requirements, all recordkeeping requirements may be new to certain providers.

(2) Effects on the promulgating administrative body: The Office of Inspector General is the promulgating administrative body, and the Local Health Departments will conduct surveys to establish compliance with this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: The local health department will conduct these surveys with existing staff.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: Since this is a new regulation, some unanticipated additional factors will exist. What these factors will be is not possible to determine.

(b) Reporting and paperwork requirements: Paperwork for the local health department.

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

(4) Assessment of alternative methods, reasons why alternatives were rejected: The regulation is necessary to implement KRS 216B.300-216B.310.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No conflict, overlapping, or duplication exists.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments:

Tiering: Was tiering applied? Yes. This regulation makes a distinction between boarding homes based on the type or previous circumstance of the resident or boarder. Those facilities that admit only boarders as defined by KRS 216B.305 are only required to meet minimal standards.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the August 2, 1993 Meeting

The July meeting of the Administrative Regulation Review Subcommittee was held on Monday, August 2, 1993, 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 July 2, 1993 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Tom Smith, Nick Kafoglis and Gene Huff; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Paula Stone, Nathan Goldman, Sharon M. Weisenbeck, Roberta Scherer, Board of Nursing; Michael Stivers, Agriculture Shows & Fairs; Brenda Priestley, Jack Damron, Department of Corrections; Sandy Pullen, Transportation Cabinet; Kevin Noland, Jeanette S. Downey, Audrey T. Carr, Agnes L. Hampton, Department of Education; William L. Ralston, Kembra Taylor, Heidi Engel, Labor Cabinet; Eugene D. Attkisson, Mines & Minerals; Carla H. Montgomery, Department of Insurance; Reginald Finger, Anita Moore, Rice Leach, Ked Fitzpatrick, Tammy Williams, Robert Nelson, Patrick Rickard, Larry Taylor, Jeanne Southworth, Stanley A. Stratford, Brooke Thomas, Virginia K. Smith, Timothy A. Sturgill, Cabinet for Human Resources; John F. Nichols, Jr., Associated Industries of Kentucky & Kentucky Chemical Industry Co.; Lloyd R. May, KEA; Robbie Bond, Southeastern Displays, Inc.; Cathryn Knepper; Paul Kneper; Caleb Blackburn; Matthew Blackburn; Thaddius Patillo Blackburn; Jemina Blackburn; John Brazel, Kentucky Chamber of Commerce; Edmund M. Fitzgibbons, Bullitt County Health Department; Ann C. Wiard, UK Hospital; Jo Ann Paul, Hayfield Montessori School; Gemma Ziegler, Rita Jalot, Nurses Professional Organization; Barbara Dermody, Kentucky Nurses Association; James E. Baker, Western Kentucky Coal Association.

LRC Staff: Greg Karambellas, O. Joseph Hood, Patrice Carroll, Tom Troth, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Board of Nursing

201 KAR 20:235. The prevention of transmission of HIV and HBV by nurses. In response to a question by Senator Huff, agency personnel stated that this administrative regulation was intended to: (1) adopt the federal Center for Disease Control Guidelines; (2) allows nurses, who are HIV or HBV positive and perform invasive procedures, to request the Board to convene an expert review panel to review her practice and to recommend limitations on her practice.

Senator Huff asked if nurses were informed of the HIV status of their patients, and whether laws governing privacy restricted informing attending nurses of a patient's HIV status. Cabinet for Human Resources personnel stated that: (1) a head nurse or a nurse had to be informed of a patients HIV status in order to determine the appropriateness of treatment or medication, they would be informed; (2) generally, nurses, as part of the health care team, are made aware of any diagnosis; (3) if a nurse is only incidentally involved in the patient's care, for example the rendering a blood pressure determination by a nurse not in charge of a patient's care, they might not be informed of the patient's HIV status; (4) nurses, who are involved with patient care decisions and part of the management team for that patient, generally would be informed; (5) Confidentiality restrictions are placed on the Cabinet for Human Resources and local health departments governing disclosure or sharing of information relating to sexually transmitted diseases, including HIV; and (6) the Omnibus Aids Act, KRS 214.625, specifically lists who may release specified information, including patient care information necessary to make decisions relating to a patient's care, permitting health providers consulting among themselves regarding diagnosis and treatment.

Senator Huff stated that he hoped a procedure could be established to protect attending nurses from infection in situations in which the nurses are in danger by informing them of the patient's HIV status. Cabinet personnel stated that OSHA requires a notification when there has been an exposure incident. Senator Huff stated that occurred after the fact and did not protect the nurse from danger. Cabinet personnel and Senator Huff stated that this issue was of concern to other medical professionals, and professionals such as coroners. Cabinet personnel stated that the administrative regulations governing disclosure and procedures were an attempt to strike a balance between federally required confidentiality provisions and the need to know.

Chairman Kerr asked whether: (1) hospitals were prohibited by law from disclosing the HIV status to physicians and nurses; and (2) the policy established by this administrative regulation changed existing policy that prohibited an HIV positive nurse from performing an invasive procedure until the nurse had been advised by the expert review panel. Cabinet personnel stated that, since health providers were permitted to disclose information when discussing patient diagnosis and treatment: (1) hospitals were not prohibited from such disclosure to those it considered were providing diagnosis and treatment; (2) this category was: (a) relatively broad; (b) subject to interpretation by the hospital; and (c) would cover whatever a hospital would prescribe by policy; (3) the prohibition against the performance of an invasive procedure by an HIV positive nurse: (a) was not required by a previous administrative regulation, and first appeared in the original language of this administrative regulation, which is a new administrative regulation; (b) was deleted when this administrative regulation was amended after the public hearing, because the prohibition in KRS 214.625 against requiring a person to disclose his HIV status applies to nurses; and (3) informing a patient of a nurse's HIV status is not required by law.

Board personnel stated that: (1) based upon the experience in other states and comments received on this administrative regulation. the Board believed that making disclosure of a nurse's HIV status voluntary would encourage people to report HIV status; and (2) invasive procedures did not include such procedures as the drawing of blood, and would be performed by relatively few nurses. This administrative regulation was amended as follows: (1) Section 1(4), to insert "obtained" after "inspected", to comply with KRS 13A.2251(b); and (2) Section 2(2), to express a duty with "shall", to comply with KRS 13A.222(4)(b).

Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Policy CPP 20.1, incorporated by reference in this administrative regulation, was amended to comply with the format requirements established in KRS 13A.220(4).

Policy CPP 27-13-01, incorporated by reference in this administrative regulation, was amended to: (1) correct the citation of the Uniform Narcotic Drug Act, KRS Chapter 218A; (2) comply with the format requirements established in KRS 13A.220(4); (3) cross reference, and require compliance with, applicable federal and state regulations relating to disposal of matter involved in urine testing; and (4) permit a combination of sanctions for a positive drug test.

501 KAR 6:140. Bell County Forestry Camp. Policy BCFC 16-01-01, incorporated by reference in this administrative regulation, was amended to: (1) delete duplicative language relating to smoking; (2) changing "searched" to "searchable" in K.1.b, page 7, to express the intent and prevent duplicating previous language; and (3) add language to 13., page 9, relating to the requirement that both feet,

when seated at picnic benches, shall be on the ground or floor, to exempt children from this requirement.

Department of Education: Bureau of Learning Results Services: Assistance and Intervention Services

703 KAR 3:205. Management improvement program. This administrative regulation was technically amended in Section 3(4) to delete "waves" and insert the word "waives" and to delete the underlining in Section 3(2) and (4). Following this technical amendment the administrative regulation was approved.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:310. Adoption of 29 CFR Part 1910 151-.153. Kembra Taylor appeared representing the Cabinet. At the request of the agency, Section 1(4) was amended to specify that "Beginning October 15, 1993" be added after the first sentence. Therefore, with this amendment, beginning October 15, 1993, those facilities regulated by this administrative regulation shall comply with the provisions and requirements enumerated in Section 1(4). The Subcommittee agreed to this amendment and the administrative regulation was then approved.

Cabinet for Human Resources: Department for Health Services: Local Health Departments

Senator Kafoglis asked: (1) What rights a person has under the merit system for local health departments established by these administrative regulations, if he is promoted to a nonmerit, division director position; and (2) whether a division director remains protected under the merit system that applied prior to his promotion. Senator Kafoglis stated that a person who had been in the classified service for several years, and then was promoted to the unclassified service, should retain the protection provided by the merit system if he is terminated from an unclassified position like Division Director.

Cabinet personnel stated that if an employee of a health department is promoted to the position of Director, the employee: (1) loses the protection of the merit system for his Division Director position; (2) becomes "unclassified"; (3) if terminated by the Department or the Board of Health: (a) retains the right to have a hearing before the Board of Health or the Department, to determine whether the dismissal will be upheld; and (b) does not have a right to appeal to the merit system or the local health personnel advisory council.

Cabinet personnel added that: (1) division directors have reversion rights to a merit system position if they have been in the local health department merit system for a period of 5 years before being promoted to the unclassified service; (2) reversion rights exist for an employee with 5 years service without regard to the reason for termination from the unclassified service; and (3) reversion rights also exist upon the layoff of an unclassified employee if the position he had held, or a similar position, is available.

Senator Smith asked if the employee would revert at the same salary he had as Division Director. Cabinet personnel stated that: (1) an employee's salary upon reversion would depend upon the classification of the position to which he reverted; (2) the actual salary would be determined through negotiations between the local board of health, the Department of Health, and the employee.

Representative Yates asked if a division director could revert back by choice. Cabinet personnel stated that an employee: (1) can always choose to revert back if he does not like the position; (2) will be able to revert as long as there is a vacant position; and (3) may also apply for any vacant position for which he qualifies.

In response to a question raised by several Subcommittee members, Cabinet personnel stated that: (1) these administrative regulations: (a) apply to 48 of 51 local health departments; (b) do not apply to Louisville, Lexington, and Northern Kentucky; and (2) each board of health is an independent agency and is not governed by the personnel system established by KRS Chapter 18A.

Representative Bruce asked for a definition of the term "administrative support". Cabinet personnel stated that the Cabinet has 6 employees who provide all the administrative support for the 48 local health departments.

902 KAR 8:040. Definition of terms applicable for the personnel program for local health departments. This administrative regulation was amended to clarify what the term "Absences" means, pursuant to the requirement for clear, unambiguous language understandable to a layman established by KRS 13A.222(4)(a).

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky. This administrative regulation was amended to: (1) Clarify that an employee, who has been denied an annual increment because of unsatisfactory performance, may be further disciplined if the action serving as the basis for the denial is not corrected; and (2) expand the Regulatory Impact Analysis to discuss the fiscal impact of salary adjustments.

902 KAR 8:080. Initial appointment, probationary period, lay-offs, performance evaluation and the resignation of employees of local health departments. This administrative regulation was amended to provide examples of classifications for which extended probationary periods may be imposed.

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees. This administrative regulation was amended to: (1) comply with the formatting requirements established by KRS 13A.220(4) by deleting: (a) a comma in Section 1(2); (b) subparagraph designations (a) and (b) in Section 1(5); and (c) a semicolon and inserting a colon in Section 3(1); and (2) expanding the Regulatory Impact Analysis, to indicate the number of employees who received salary increases and decreases for fiscal year 92-93.

902 KAR 8:100. Disciplinary procedures applicable for local health department employees. This administrative regulation was amended to: (1) define what situations may result in disciplinary action in Section 1(3); (2) change a semicolon to a colon in Section 2(a), pursuant to the drafting requirements established by KRS 13A.220(4) and 13A.222; and (3) insert a new Section 2(6) to require an Appeal Request Form be provided when an employee is disciplined.

902 KAR 8:120. Leave provisions applicable to employees of local health departments. This administrative regulation was amended, pursuant to the drafting requirements established by KRS 13A.220(4) and 13A.222, to: (1) delete a semicolon and insert a colon in Section 5(6); (2) delete an apostrophe in the word "employees" in Section 7(3) and (3) renumber Section 17(3) as Section 17(4) and to renumber the remaining subsections accordingly.

Department for Mental Health and Mental: Retardation Services: Mental Health

908 KAR 2:070. Standards for rape crisis centers. This administrative regulation was amended as follows: (1) The RELATES TO paragraph was amended to: (a) insert citations of specific applicable sections of the 1992 Budget Bill and Budget Memorandum; (b) delete the citation of KRS Chapter 47, because this administrative regulation does not relate to KRS Chapter 47; (2) the STATUTORY AUTHORITY paragraph was amended to delete "KRS 210.440", and to insert "KRS 210.440" and citations to the 1992 Budget Bill and Budget Memorandum, which grant statutory authority to promulgate this administrative regulation; (3) the NECESSITY AND FUNCTION paragraph was amended to provide a clear explanation of the necessity and purpose for, this administrative regulation; and (4) Sections 1, 2, 3, 4, and 5 were amended, and Section 6 was created, to: (a) comply with the format and drafting requirements of KRS 13A.220(4) and 13A.222; (b) delete or reword repetitive and unclear language and requirements relating to center duties, files, position qualifications and duties.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:130. Western Kentucky Correctional Complex.

Transportation Cabinet: Department of Vehicle Regulation: Commercial Driver's License

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

Office of Aeronautics: Airport Zoning Commission

602 KAR 50:010. Definitions relating to 602 KAR Chapter 50. Sandy Pullen appeared before the Subcommittee. Chairman Kerr pointed out to Ms. Pullen that this administrative regulation is a "definitions" administrative regulation. KRS Chapter 13A requires that definitions be put in the first section of a regulation to which they apply or in a separate administrative regulation exclusively for definitions. He pointed out that Section 3 of this administrative regulation is not a definition and should be transferred to another administrative regulation. Ms Pullen stated that the Cabinet amends this regulation several times a year and requested that she be allowed to correct this the next time this regulation is amended. Without dissent from the Subcommittee, Chairman Kerr agreed to that. The Subcommittee approved the regulation without objection

Department of Highways: Traffic

603 KAR 5:230. Bridge weight limits on the extended weight coal or coal by-products haul road system.

Department of Education: Office of District Support Services: School Administration and Finance

702 KAR 3:190. Maximum class sizes.

Office of Learning Programs Development: Office of Instruction

704 KAR 3:405. Superintendent training program and assessment process.

Office of Special Instructional Services: Fiscal Management

705 KAR 2:031. Repeal of 705 KAR 2:130 and 705 KAR 2:030.

Department of Mines and Minerals: Miner Training, Education and Certification

805 KAR 7:030. Annual retraining. Gene Attkisson appeared representing the Department. This administrative regulation concerns a program of certified mine foreman retraining and examination. Mr. Attkisson explained that these people could receive this training either through programs offered through the department or through outside "contract" trainers. He stated that those who receive their retraining from private "contract" trainers would pay for the training themselves, but if they receive their annual retraining from trainers provided by the department the department would pay the cost.

Senator Kafoglis asked why the person would not pay a fee if the training was through the Department. Mr. Attkisson replied that the agency considers the training part of the safety requirements and that the agency can absorb that. Senator Kafoglis asked for the projected cost. Chairman Kerr pointed out that the regulatory impact analysis mentioned that the cost to the agency would be approximately 90,000 dollars annually. Mr. Attkisson said "yes, but most of those costs would be absorbed through current cost such as existing salaries." He stated that through use of existing resources little additional cost to the agency is anticipated. The regulation was approved without objection.

Department of Insurance: Administration

806 KAR 2:120. Filing of examination report.

806 KAR 2:130. Disclosure of information regarding examinations.

Cabinet for Human Resources: Department for Health Services: Local Health Departments

902 KAR 8:050. Local health personnel advisory council for local health departments and administrative support of the council.

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.

902 KAR 8:130. Participation of local health department employees in political activities.

902 KAR 8:140. Appointment of a health officer or a Health Department Director of a local health department.

Department for Employment Services: Unemployment Insurance

903 KAR 5:270. Maximum weekly benefit rates.

Department for Medicaid Services

907 KAR 1:017. Hospital indigent care assurance program (HICAP).

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the September meeting upon agreement by the promulgating agency and the Subcommittee:

Department for Local Government: Policy and Management

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

Board of Medical Licensure

201 KAR 9:310. Continuing medical education.

Economic Development Cabinet: Department of Agriculture: Fairs and Shows

302 KAR 15:010E. Administration; state aid to local fairs. Subcommittee staff stated that: (1) this administrative regulation was filed only as an emergency administrative regulation; (2) while amendments were suggested to correct numerous KRS Chapter 13A drafting problems, since this emergency administrative regulation will expire, the: (a) amendments will expire when this emergency administrative regulation expires; and (b) the existing administrative regulation will continue in effect and will not have been amended; (3) whether the type of limited duration emergency existed that justified filing an emergency administrative regulation, rather than an emergency administrative regulation accompanied by an amended ordinary administrative regulation is questionable. Agency personnel agreed to defer this administrative regulation for one month to allow Subcommittee staff and agency personnel to confer on the issues raised by the filing of an emergency administrative regulation and the content of the administrative regulation.

Transportation Cabinet: Department of Highways: Maintenance

603 KAR 3:080. Advertising devices.

Department of Education: Office of Learning Programs Development

704 KAR 7:120. Home or hospital instruction.

Office of Education for Exceptional Children: Exceptional and Handicapped Program

707 KAR 1:061. Repeal of existing regulations.

707 KAR 1:160. Free appropriate public education.

707 KAR 1:170. Identification of children and youth with disabilities.

707 KAR 1:180. Due process procedures.

707 KAR 1:190. Evaluation.

707 KAR 1:200. Eligibility of children and youth with disabilities.

707 KAR 1:210. Individual education programs.

707 KAR 1:220. Placement in the least restrictive environment.

707 KAR 1:230. Delivery of services.

707 KAR 1:240. Confidentiality of personally identifiable information.

707 KAR 1:250. Services in other programs.

707 KAR 1:260. Comprehensive system of personnel development.

Cabinet for Human Resources: Department for Health Services: Health Services and Facilities

902 KAR 20:004. Certificate of need process.

OTHER BUSINESS: Cabinet for Human Resources: Department for Social Services: Child Welfare

905 KAR 1:010. Application for permission to place or receive child. Pursuant to KRS 13A.030(3), the Subcommittee requested the Cabinet to: (1) submit information relating to the Cabinet's policy on nonsibling adoptions, established in Section 3 of this administrative regulation; and (2) be present to answer questions on the Cabinet's justification for limiting nonsibling adoptions.

Chairman Kerr introduced Mr. and Mrs. Knepper's and discussed: (1) their intent to adopt one (1) nonsibling child and five sibling children from an orphanage in Haiti; (2) the Cabinet's refusal to accept their application to receive the sixth nonsibling child, under the provisions of Section 3 that prohibits the independent adoption of a nonsibling child with members of a sibling group within a one-year period of the previously approved application.

Mr. Knepper related how he and his wife learned of the orphanage in Haiti through a friendship with an Indiana family that had adopted over 28 Haitian children. He stated that they had spent time visiting with these children and frequently had the children visit their home, that he and his wife had studied Haitian culture and language, and made every attempt to better understand the ways in which the Haitian children would have to adjust to a new home. Mr. and Mrs. Knepper also advised the Subcommittee that they have spent time in Haiti with the children they wish to adopt, and are presently working with the Cabinet to complete their home study. They concluded by stating that this administrative regulation had prevented them from pursuing the adoption of the sixth child. The nonsibling child had been abandoned by his birth parents, lived his entire life in the orphanage, and had lived with the other children they plan to adopt for several years.

Chairman Kerr asked Cabinet officials for the basis of its different requirements for the adoption of biological and non biological siblings, and to justify the limitation placed on the adoption of nonsiblings.

Cabinet personnel stated that the Cabinet's statutory obligation is first and foremost to consider the best interest of the child to be placed from a financial, medical, psychological, and psychiatric standpoint. They referred to the Child Welfare League of America Standards for Adoption Service, the North American Council on Adoptable Children, and the National Committee for Adoption "Adoption Factbook", as national standards on the subject of independent adoption and justification for the Cabinet's policy on limiting nonsibling adoptions.

Cabinet personnel further explained that: (1) the 1 year limitation found in Section 3 of the administrative regulation allows the previously placed children to assimilate into their new home before the introduction of an additional nonsibling child; (2) independent adoptions performed intercountry often involve children who are classified as "special needs children", as they have a history of incest, neglect, abuse or chronic illnesses; (3) the Cabinet takes great care in approving such applications; and (4) birth siblings have more similarities in their living arrangements, behaviors, family norms and needs, than unrelated children.

Chairman Kerr asked how many: (1) children were available for adoption in Kentucky last year; and (2) families are presently waiting for children to adopt. Cabinet personnel stated that: (1) approximately 230 children were placed for adoption; and (2) 500 families have been approved and are waiting for placements, and 1,000 families have filed a "Statement of Intent" to adopt. They added that these families are studied by the Cabinet and approved in proportion to the number of previously approved families who receive a child for adoption.

When asked what data the Cabinet had relating to instate independent adoptions approved yearly, Cabinet personnel stated that: (1) it is hard to ascertain a precise number; and (2) the Cabinet receives 450 applications for permission to receive or place a child annually, but not all of these result in an actual placement.

Chairman Kerr asked how many intercountry independent adoptions are attempted in Kentucky each year. Cabinet personnel stated that approximately 15 applications are filed each year in Kentucky.

Chairman Kerr stated that the Cabinet's one year limitation on accepting applications for nonsiblings, found in Section 3 of the administrative regulation, was added by the Cabinet in October, 1991. He asked if the Cabinet had a similar prohibition prior to 1991. Cabinet personnel responded that it has been the standard practice of the Cabinet to limit nonsibling adoptions until the "previously placed child has been in the home for a minimum of one year and the adoption legally finalized". Cabinet personnel stated that the year is calculated from the date of placement and not the date the adoption is legally finalized.

Senator Smith asked if the Cabinet requires an investigation into the financial stability of the prospective adoptive parents and the health status of the child. Cabinet personnel stated that: (1) an independent adoption investigation involves an extensive home study and includes an assessment of the prospective adoptive parents ability to financially meet the needs of the child; (2) the Cabinet examines the adoptive parents physical, emotional and psychological ability to meet the needs of the child and the entire family; (3) independent or nonagency adoptions, are carefully scrutinized because these adoptions present additional financial considerations; (4) there are no federal or state adoption subsidies available to help meet the needs of the child and the adoptive family; (5) independent adoptions usually do not involve large sibling groups or older children who would automatically meet the definition of special needs child; (6) other concerns in independent adoptions arise when the: (a) prospective adoptive children have health and medical problems; and (b) adoptive parents do not have adequate private health insurance to meet the medical needs of a specific child.

Senator Smith asked Mr. and Mrs. Knepper whether the children they were planning to adopt speak English. They responded that two of the six children speak English.

Senator Smith also asked Mr. and Mrs. Knepper about their plans for educating the children. They explained that they have several options to consider: (1) Mrs. Knepper is a Kentucky certified teacher and teaching math at a school where the children could attend for free; (2) they have also considered home schooling the children, or having them taught with other Haitian children they have come to know.

Mr. Knepper was asked by Chairman Kerr where he was employed. He stated that he has a bachelor's degree in psychology, a masters degree from the University of Wisconsin, and teaches political science at Northern Kentucky University.

Cabinet personnel agreed with Chairman Kerr's request to: (1) provide Subcommittee staff with additional information concerning independent adoptions; and (2) return for the Subcommittee's September meeting to continue discussion of this administrative regulation.

Mr. and Mrs. Knepper stated that: (1) Cabinet representatives had been very helpful and professional in assisting them in their adoption request; and (2) their only concern was the limitation found in Section 3 which has placed a roadblock in their request for permission to receive the sixth Haitian child.

Mrs. Knepper asked Cabinet personnel if they were aware of any studies relating to independent adoptions of nonsiblings because, if studies indicate difficulties, she would like to anticipate them. Cabinet personnel stated there were no such studies. Mrs. Knepper stated that if such studies are not available, there does not appear to be a justification for the Cabinet's policy to preclude the simultaneous adoption of nonsiblings.

In response to a question by Chairman Kerr, Cabinet personnel stated that the Cabinet: (1) was not aware of studies or expert opinion against the simultaneous adoption of nonsiblings; and (2) had not based the regulatory requirements on such studies or opinion.

Chairman Kerr: (1) agreed that the prohibition of the simultaneous adoption of nonsiblings is the primary issue before the Subcommittee;

(2) stated that: (a) an expert's opinion that such adoptions are not in the best interest of a particular child does not necessarily mean that such a prohibition is justified; (b) he was concerned that the limitation imposed by this administrative regulation was simply a blanket prohibition of nonsibling adoptions; (c) the limitation precludes the Cabinet from fulfilling its statutory duty to consider the best interest of each and every child requested for adoption; and (d) unless there were facts that supported a determination that simultaneous adoption of nonsiblings was not in the best interest of the children,the Cabinet was not complying with applicable statutes.

Senator Smith stated that: (1) an expert's notion on a particular issue should always be scrutinized, in the absence of valid case studies or literature on the issue of nonsibling adoptions; and (2) he is interested in looking at the facts and findings before the Subcommittee moves forward.

Mrs. Knepper stated that the Indiana family who adopted 28 nonrelated children, ten within a two month period, could offer valuable testimony concerning the success of nonsibling adoptions.

Cabinet personnel responded that if there are any other families that have raised such a large number of children successfully, they would like to know. Both Mrs. Knepper and Chairman Kerr responded that there are such families Cabinet personnel could contact and interview.

Chairman Kerr stated that he was concerned about questions raised by a Cabinet staff member over Mr. and Mrs. Knepper's appeal to legislators and to the Subcommittee. Chairman Kerr read from a copy of a letter, dated June 10, 1993, sent to Mr. and Mrs. Knepper by a social services worker, in which the worker stated "I am somewhat confused on matters of motivation insomuch as central office personnel has informed me that you have made a new legislative inquiry at this time to Representative Callahan concerning that same previously explained issue." He asked for assurances from the Cabinet that Mr. and Mrs. Knepper not be admonished or chastised for complaining about this administrative regulation, because it is within their province to do so. Chairman Kerr stated that the Subcommittee encourages any person who perceives a regulation to be unfair or unfounded to bring it to the Subcommittee's attention. He asked that Cabinet personnel communicate that to the Cabinet.

Cabinet personnel stated that the Cabinet does not view this matter as something to retaliate against, but as an important issue which the Cabinet will reexamine and take a broader perspective on its policy of nonsibling adoptions. Cabinet personnel stated that the Cabinet appreciated the Subcommittee calling other opinions to their attention.

Chairman Kerr advised Mr. and Mrs. Knepper that the Subcommittee: (1) could not prevent the implementation of an administrative regulation to which it objects; (2) cannot amend an administrative regulation without the consent of the promulgating administrative body; and (3) in the absence of an amendment, could find an administrative regulation deficient, which would cause it to expire, unless codified, at the end of the next Regular Session; .

Chairman Kerr asked Cabinet personnel to consider an amendment, because the limitation in Section 3 appears to place an artificial roadblock to nonsibling adoptions, pointing out that the Cabinet would still consider the application one (1) year after the placement of the previously placed children.

Cabinet personnel were reminded to provide additional information to Subcommittee staff on independent adoptions as soon as possible.

The Subcommittee adjourned at 11:45 a.m. until September 3, 1993 at 10 a.m. in Room 131 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of July 21, 1993

The Interim Joint Committee on Agriculture and Natural Resources met Wednesday, July 21, 1993, and submits the following report:

The Committee determined that the following administrative regulations comply with KRS Chapter 13A:

Department of Agriculture: 302 KAR 20:040E, 302 KAR 20:054 & E, 302 KAR 20:055E, 302 KAR 20:065E, 302 KAR 20:070E.
Department of Fish and Wildlife Resources: 302 KAR 2:111.
Department of Mines and Minerals: 805 KAR 5:010.

The meeting adjourned July 21, 1993 at 2:30 p.m.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of August 3, 1993

The Interim Joint Committee on Transportation met on Thursday, August 3, 1993 and submits this report:

The Committee determined that the following regulation complied with KRS Chapter 13A: 603 KAR 9:010 - Railroad crossing closure procedure.

The Committee adjourned at 2:45 p.m.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of August 5, 1993

The Interim Joint Committee on Education met Thursday, August 5, 1993, and approved the following administrative regulation: Kentucky Higher Education Assistance Authority, 11 KAR 3:100 - Wage garnishments for student loan borrowers.

The Interim Joint Committee on Education approved the following regulation as amended by letter to the committee from Joseph W. Kelly, State Board of Education: Department of Education, 704 KAR 4:020 - Comprehensive School Health. The amendment is as follows:

Section 2(1) - Delete the following sentence: [~~Local boards may extend this time not to exceed two (2) months.~~]
After the phrase "...prior to entry into the sixth grade.", and before the sentence beginning with "Both medical examinations...", insert the following new sentence: Local school boards may extend the deadline by which to obtain either medical examination, not to exceed two (2) months.
Amend Section 2(5)(b) as follows: A requirement that whenever children are present during school hours, there shall be at least one (1) adult present in the schools who is certified in a standard first aid course which includes CPR for infants and children; [~~At least two (2) adults in each school, at least one (1) of whom shall be present in the school at all times during school hours and both of whom shall have completed and been certified in a standard first aid course which includes CPR for infants and children;~~]

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates C2

The Locator Index lists all regulations published in VOLUME 20 of the Administrative Register from July, 1993 through June, 1994. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other action which may affect the regulation. NOTE: The regulations listed under VOLUME 19 are those regulations that were originally published in the Volume 19 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1993 bound Volumes were published.

KRS Index C10

The KRS Index is a cross-reference of statutes to which regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication in VOLUME 20 of the Administrative Register.

Subject Index C14

The Subject Index is a general index of regulations published in VOLUME 20 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

VOLUME 19

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

Regulation Number	19 Ky.R Page No.	Effective Date
9 KAR 1:010E	2375	3-17-93
Replaced	2611	6-7-93
9 KAR 1:020E	2375	3-17-93
Replaced	2611	6-7-93
9 KAR 1:030E	2375	3-17-93
Replaced	2349	6-7-93
103 KAR 5:150E	2376	3-26-93
Replaced		6-24-93
200 KAR 6:045E	2001	1-26-93
Replaced	2614	6-7-93
201 KAR 2:105E	862	8-18-92
Replaced	445	10-8-92
302 KAR 20:040E	2596	4-30-93
Expires		9-29-93
302 KAR 20:054E	2599	4-15-93
Replaced		8-3-93
302 KAR 20:055E	2600	4-30-93
Expires		9-29-93
302 KAR 20:065E	2602	4-30-93
Expires		9-29-93
302 KAR 20:070E	2604	4-30-93
Expires		9-29-93
307 KAR 2:010E	2607	4-15-93
Replaced		6-25-93
307 KAR 3:010E	2609	4-15-93
Replaced		6-25-93
501 KAR 6:090E	2377	3-26-93
Replaced	2304	6-7-93
501 KAR 6:110E	2378	3-26-93
Replaced	2305	7-12-93
806 KAR 3:150E	2380	4-15-93
Replaced	2498	7-12-93
806 KAR 3:180E	2381	4-15-93
Replaced	2576	7-12-93
810 KAR 1:030E	1730	12-29-92
Replaced	2651	6-7-93
903 KAR 5:290E	2381	3-27-93
Replaced	2337	6-7-93
907 KAR 1:013E	2382	3-31-93
Expired		7-7-93
907 KAR 1:016E	2385	3-26-93
Replaced		6-16-93
907 KAR 1:031E	2012	1-21-93
Replaced	2148	6-7-93
907 KAR 1:505E	2386	3-25-93
Replaced	2340	6-16-93
907 KAR 1:512E	2387	3-26-93
Replaced	2653	6-7-93

ORDINARY REGULATIONS:

9 KAR 1:010	2348	
As Amended	2611	6-7-93
9 KAR 1:020	2348	
As Amended	2611	6-7-93
9 KAR 1:030	2349	6-7-93
11 KAR 3:100		
Amended	2475	
11 KAR 6:010		
Amended	2478	(See 20 Ky.R.)
11 KAR 8:030		
Amended	2480	7-1-93
11 KAR 12:070		
Amended	2482	7-1-93
12 KAR 1:005		
Amended	1812	(See 20 Ky.R.)
12 KAR 1:010		
Amended	1813	(See 20 Ky.R.)
12 KAR 1:025		
Amended	1813	(See 20 Ky.R.)
12 KAR 1:055		
Amended	1814	6-23-93
12 KAR 1:060		
Amended	1815	(See 20 Ky.R.)
12 KAR 1:065		
Amended	1816	(See 20 Ky.R.)
12 KAR 1:075		
Amended	1817	(See 20 Ky.R.)
12 KAR 1:080		
Amended	1818	(See 20 Ky.R.)
12 KAR 1:085		
Amended	1819	6-23-93
12 KAR 1:090		
Amended	1820	(See 20 Ky.R.)
12 KAR 1:095		
Amended	1822	6-23-93
12 KAR 1:100		
Amended	1823	6-23-93
12 KAR 1:105		
Amended	1824	6-23-93
14 KAR 1:010		
Amended	2075	
As Amended	2611	6-7-93
32 KAR 2:050	1236	
Amended	2484	(See 20 Ky.R.)
32 KAR 2:060		
Amended	2485	(See 20 Ky.R.)
32 KAR 2:120	2519	
Withdrawn	6-7-93	
32 KAR 2:130	2519	(See 20 Ky.R.)
32 KAR 2:140	2520	(See 20 Ky.R.)
32 KAR 2:150	2521	(See 20 Ky.R.)
103 KAR 5:150	2350	(See 20 Ky.R.)
105 KAR 1:010		
Amended	2288	6-7-93
105 KAR 1:170		
Amended	2290	6-7-93
105 KAR 1:270	2352	6-7-93
200 KAR 6:045	2160	
As Amended	2614	6-7-93
200 KAR 17:060	2522	(See 20 Ky.R.)
200 KAR 19:010	2161	(See 20 Ky.R.)
201 KAR 1:045		
Amended	2661	(See 20 Ky.R.)
201 KAR 1:130		
Amended	2662	(See 20 Ky.R.)
201 KAR 18:180	1697	(See 20 Ky.R.)

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
201 KAR 18:190	1697	(See 20 Ky.R.)
201 KAR 20:056		
Amended	2664	(See 20 Ky.R.)
201 KAR 20:057		
Amended	2666	(See 20 Ky.R.)
201 KAR 20:161		
Amended	2667	(See 20 Ky.R.)
201 KAR 20:162		
Amended	2669	8-6-93
201 KAR 20:215		
Amended	2671	8-6-93
201 KAR 20:235	2755	
201 KAR 20:240		
Amended	2672	8-6-93
201 KAR 20:260		
Amended	2673	(See 20 Ky.R>)
201 KAR 20:370		
Amended	2674	8-6-93
201 KAR 22:031		
Amended	2291	
As Amended	2614	6-7-93
201 KAR 22:106		
Amended	2293	6-7-93
201 KAR 27:012	1936	(See 20 Ky.R.)
201 KAR 30:010	2163	
Amended	2460	7-9-93
201 KAR 30:020	2164	
Amended	2460	7-9-93
201 KAR 30:030	2165	
Amended	2461	7-9-93
201 KAR 30:040	2166	
Amended	2461	7-9-93
201 KAR 30:050	2167	
Amended	2461	7-9-93
201 KAR 30:060	2169	
Amended	2463	7-9-93
201 KAR 30:070	2170	
Amended	2463	7-9-93
201 KAR 30:080	2171	
Amended	2465	(See 20 Ky.R.)
201 KAR 30:090	2173	7-9-93
201 KAR 30:100		
Repealed	2173	7-9-93
301 KAR 2:047		
Repealed	2239	4-7-93
301 KAR 2:111		
Amended	2675	7-21-93
301 KAR 2:171	2525	(See 20 Ky.R.)
301 KAR 2:211	2529	(See 20 Ky.R.)
301 KAR 4:100	2531	(See 20 Ky.R.)
302 KAR 20:054	2756	(See 20 Ky.R.)
302 KAR 31:030	2174	
As Amended	2617	6-7-93
302 KAR 31:035	2175	
As Amended	2616	6-7-93
307 KAR 2:010	2533	(See 20 Ky.R.)
307 KAR 3:010	2536	(See 20 Ky.R.)
401 KAR 49:210	2538	(See 20 Ky.R.)
401 KAR 63:035	1466	
Amended	1789	
Witdrawn		6-3-93
500 KAR 4:060		
Amended	2678	8-6-93
501 KAR 1:040		
Amended	2295	(See 20 Ky.R.)
501 KAR 3:010		
Amended	1844	
As Amended	2618	6-7-93
501 KAR 3:030		
Amended	1845	6-7-93
501 KAR 3:040		
Amended	1846	
As Amended	2619	6-7-93
501 KAR 3:050		
Amended	1847	
As Amended	2620	6-7-93
501 KAR 3:060		
Amended	1850	
As Amended	2623	6-7-93
501 KAR 3:090		
Amended	1852	6-7-93
501 KAR 3:100		
Amended	1853	
As Amended	2624	6-7-93
501 KAR 3:120		
Amended	1854	6-7-93
501 KAR 3:130		
Amended	1856	
As Amended	2625	6-7-93
501 KAR 3:150		
Amended	1857	
As Amended	2625	6-7-93
501 KAR 4:010		
Amended	1860	
As Amended	2628	6-7-93
501 KAR 4:040		
Amended	1860	
As Amended	2628	6-7-93
501 KAR 4:050		
Amended	1862	
As Amended	2629	6-7-93
501 KAR 4:060		
Amended	1865	
As Amended	2631	6-7-93
501 KAR 4:070		
Amended	1867	6-7-93
501 KAR 4:100		
Amended	1867	
As Amended	2632	6-7-93
501 KAR 4:120		
Amended	1868	6-7-93
501 KAR 4:140		
Amended	1869	6-7-93
501 KAR 5:001	1955	6-7-93
501 KAR 5:010		
Repealed	1955	6-7-93
501 KAR 5:020		
Repealed	1955	6-7-93
501 KAR 5:030		
Repealed	1955	6-7-93
501 KAR 5:040		
Repealed	1955	6-7-93
501 KAR 5:050		
Repealed	1955	6-7-93
501 KAR 5:060		
Repealed	1955	6-7-93

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
501 KAR 5:070		
Repealed	1955	6-7-93
501 KAR 5:080		
Repealed	1955	6-7-93
501 KAR 5:090		
Repealed	1955	6-7-93
501 KAR 5:100		
Repealed	1955	6-7-93
501 KAR 5:110		
Repealed	1955	6-7-93
501 KAR 5:120		
Repealed	1955	6-7-93
501 KAR 5:130		
Repealed	1955	6-7-93
501 KAR 6:020		
Amended	2298	6-7-93
501 KAR 6:030		
Amended	2300	6-7-93
Amended	2486	7-12-93
Amended	2679	8-6-93
501 KAR 6:040		
Amended	2301	6-7-93
Amended	2488	7-12-93
501 KAR 6:050		
Amended	2681	8-6-93
501 KAR 6:060		
Amended	2303	6-7-93
501 KAR 6:070		
Amended	2489	7-12-93
501 KAR 6:080		
Amended	2682	8-6-93
501 KAR 6:090		
Amended	2304	6-7-93
501 KAR 6:110		
Amended	2305	7-12-93
501 KAR 6:130		
Amended	2307	6-7-93
501 KAR 6:140		
Amended	2308	6-7-93
Amended	2683	8-6-93
501 KAR 7:040		
Amended	1876	
As Amended	2633	6-7-93
501 KAR 7:050		
Amended	1877	
As Amended	2634	6-7-93
501 KAR 7:060		
Amended	1879	
As Amended	2635	6-7-93
501 KAR 7:120		
Amended	1880	6-7-93
501 KAR 10:010	1956	
As Amended	2636	6-7-93
501 KAR 10:020	1957	6-7-93
501 KAR 10:030	1958	6-7-93
501 KAR 10:040	1959	
As Amended	2637	6-7-93
501 KAR 10:050	1961	
As Amended	2637	6-7-93
501 KAR 10:060	1964	
As Amended	2641	6-7-93
501 KAR 10:070	1966	6-7-93
501 KAR 10:080	1967	
As Amended	2642	6-7-93
501 KAR 10:090	1968	6-7-93
501 KAR 10:100	1969	
As Amended	2643	6-7-93
501 KAR 10:110	1970	6-7-93
501 KAR 10:120	1971	6-7-93
501 KAR 10:130	1972	
As Amended	2643	6-7-93
501 KAR 10:140	1973	6-7-93
503 KAR 5:130	2756	(See 20 Ky.R.)
603 KAR 5:050		
Amended	2490	7-6-93
603 KAR 5:070		
Amended	2309	
As Amended	2644	5-26-93
603 KAR 5:230		
Amended	2684	(See 20 Ky.R.)
603 KAR 9:010	2757	(See 20 Ky.R.)
605 KAR 1:130		
Amended	2313	5-26-93
701 KAR 5:070		
Amended	2492	7-1-93
704 KAR 3:303		
Amended	2493	7-1-93
704 KAR 4:020		
Amended	2494	(See 20 Ky.R.)
704 KAR 7:120	2539	(See 20 Ky.R.)
704 KAR 20:120		
Amended	2316	6-7-93
704 KAR 20:198		
Amended	2317	(See 20 Ky.R.)
704 KAR 20:320		
Amended	2319	6-7-93
704 KAR 20:510		
Amended	2322	
As Amended	2647	6-7-93
707 KAR 1:061	2540	
707 KAR 1:160	2541	(See 20 Ky.R.)
707 KAR 1:170	2543	(See 20 Ky.R.)
707 KAR 1:180	2545	(See 20 Ky.R.)
707 KAR 1:190	2551	(See 20 Ky.R.)
707 KAR 1:200	2554	(See 20 Ky.R.)
707 KAR 1:210	2558	(See 20 Ky.R.)
707 KAR 1:220	2561	(See 20 Ky.R.)
707 KAR 1:230	2564	(See 20 Ky.R.)
707 KAR 1:240	2569	
707 KAR 1:250	2572	(See 20 Ky.R.)
707 KAR 1:260	2574	
780 KAR 3:040		
Amended	2496	(See 20 Ky.R.)
780 KAR 9:020		
Amended	2497	
Withdrawn		6-7-93
781 KAR 1:030		
Amended	2323	6-7-93
803 KAR 2:307		
Amended	2734	8-6-93
803 KAR 2:310		
Amended	2736	(See 20 Ky.R.)
805 KAR 4:005		
Recodified from 805 KAR 4:070		6-8-93
805 KAR 4:010		
Amended	2325	6-7-93

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
805 KAR 4:070		
Amended	2327	6-7-93
Recodified as 805 KAR 4:005		6-7-93
805 KAR 5:010		
Amended	2739	7-21-93
805 KAR 7:030		
Amended	2740	
806 KAR 1:010		
Amended	2328	
As Amended	2648	6-7-93
806 KAR 3:150		
Amended	2498	7-12-93
806 KAR 3:180	2576	7-12-93
806 KAR 17:090	2353	(See 20 Ky.R.)
806 KAR 30:090	2355	6-7-93
806 KAR 30:100	2356	6-7-93
810 KAR 1:009		
Amended	2499	(See 20 Ky.R.)
810 KAR 1:030	1987	
As Amended	2651	6-7-93
811 KAR 1:070		
Amended	2502	(See 20 Ky.R.)
815 KAR 20:020		
Amended	2503	7-12-93
815 KAR 20:030		
Amended	2334	6-7-93
815 KAR 20:050		
Amended	2335	6-7-93
815 KAR 20:120		
Amended	2113	7-12-93
815 KAR 20:130		
Amended	2742	(See 20 Ky.R.)
815 KAR 45:100	2577	(See 20 Ky.R.)
901 KAR 5:031		
Repealed	2759	8-6-93
901 KAR 5:032	2759	8-6-93
902 KAR 8:040	2760	(See 20 Ky.R.)
902 KAR 8:050	2761	(See 20 Ky.R.)
902 KAR 8:060	2763	(See 20 Ky.R.)
902 KAR 8:070	2765	(See 20 Ky.R.)
902 KAR 8:080	2768	(See 20 Ky.R.)
902 KAR 8:090	2770	(See 20 Ky.R.)
902 KAR 8:100	2771	(See 20 Ky.R.)
902 KAR 8:110	2773	
902 KAR 8:120	2774	(See 20 Ky.R.)
902 KAR 8:130	2777	
902 KAR 8:140	2778	
902 KAR 20:004	659	
Amended	2745	
902 KAR 20:016		
Amended	2506	(See 20 Ky.R.)
902 KAR 20:073	2196	6-16-93
902 KAR 20:291	2199	
Amended	2466	6-7-93
903 KAR 5:290		
Amended	2337	6-7-93
904 KAR 3:010		
Amended	2750	8-6-93
907 KAR 1:013		
Amended	2515	
Withdrawn		7-7-93
907 KAR 1:016		
Amended	2338	(See 20 Ky.R.)
907 KAR 1:031		
Amended	2148	6-7-93
907 KAR 1:428		
Amended	2339	
As Amended	2653	6-7-93
907 KAR 1:505		
Amended	2340	6-16-93
907 KAR 1:512	2357	
As Amended	2653	6-7-93
908 KAR 1:310		
Amended	2341	
Amended	2655	(See 20 Ky.R.)
908 KAR 2:070	2779	(See 20 Ky.R.)

*Statement of Consideration Not Filed by Deadline; Regulation Expired (KRS 13A.280(2))

LOCATOR INDEX - EFFECTIVE DATES

VOLUME 20

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

Regulation Number	19 Ky.R Page No.	Effective Date
2 KAR 2:010E	483	8-12-93
101 KAR 2:100E	483	8-3-93
101 KAR 3:010E	488	8-3-93
301 KAR 2:044E	492	7-30-93
301 KAR 2:260E	494	7-30-93
301 KAR 3:030E	494	7-30-93
302 KAR 15:010E	4	5-18-93
415 KAR 1:115E	495	8-13-93
501 KAR 6:020E	277	6-24-93
601 KAR 11:040E	228	6-16-93
603 KAR 9:010E	7	5-19-93
Replaced	307	8-3-93
806 KAR 2:120E	8	6-15-93
806 KAR 2:130E	8	6-15-93
810 KAR 1:031E	496	7-20-93
902 KAR 8:040E	9	5-19-93
902 KAR 8:050E	10	5-19-93
902 KAR 8:060E	11	5-19-93
902 KAR 8:070E	13	5-19-93
902 KAR 8:080E	15	5-19-93
902 KAR 8:090E	17	5-19-93
902 KAR 8:100E	18	5-19-93
902 KAR 8:110E	19	5-19-93
902 KAR 8:120E	19	5-19-93
902 KAR 8:130E	23	5-19-93
902 KAR 8:140E	23	5-19-93
902 KAR 20:004E	24	5-18-93
902 KAR 55:015E	502	7-20-93
903 KAR 5:270E	280	6-16-93
905 KAR 2:001E	29	6-7-93
905 KAR 2:011E	31	6-7-93
905 KAR 2:090E	31	6-7-93
905 KAR 2:100E	33	6-7-93
905 KAR 2:110E	36	6-7-93
905 KAR 2:120E	38	6-7-93
905 KAR 2:130E	42	6-7-93
907 KAR 1:013E	281	7-7-93
907 KAR 1:017E	284	6-16-93
907 KAR 1:022E	285	7-7-93
907 KAR 1:025E	288	7-7-93
907 KAR 1:031E	294	7-7-93
907 KAR 1:044E	504	7-28-93
907 KAR 1:045E	505	7-28-93
907 KAR 1:536E	296	7-7-93
908 KAR 2:060E	506	7-28-93

ORDINARY REGULATIONS:

Regulation Number	19 Ky.R Page No.	Effective Date
2 KAR 2:010	668	
11 KAR 3:100		
Amended	96	8-5-93
11 KAR 6:010		
As Amended	44	7-1-93
11 KAR 10:010		
Amended	383	
11 KAR 10:020		
Amended	385	
12 KAR 1:005		
As Amended	45	6-23-93
12 KAR 1:010		
As Amended	46	6-23-93
12 KAR 1:025		
As Amended	47	6-23-93
12 KAR 1:060		
As Amended	47	6-23-93
12 KAR 1:065		
As Amended	47	6-23-93
12 KAR 1:075		
As Amended	48	6-23-93
12 KAR 1:080		
As Amended	48	6-23-93
12 KAR 1:090		
As Amended	50	6-23-93
32 KAR 2:050		
As Amended	50	7-12-93
32 KAR 2:060		
As Amended	50	7-12-93
32 KAR 2:130		
As Amended	51	7-12-93
32 KAR 2:140		
As Amended	51	7-12-93
32 KAR 2:150		
As Amended	297	8-6-93
45 KAR 1:070	163	
Amended	522	
101 KAR 2:100		
Amended	567	
101 KAR 3:010		
Amended	572	
103 KAR 5:150		
As Amended	52	
As Amended	297	6-24-93
109 KAR 10:010		
Amended	131	
200 KAR 17:060		
As Amended	53	6-23-93
200 KAR 19:010		
As Amended	55	7-12-93
201 KAR 1:045		
As Amended	300	7-9-93
201 KAR 1:130		
As Amended	301	7-9-93
201 KAR 1:300	668	
201 KAR 9:310	163	
201 KAR 9:315	450	
201 KAR 18:180		
As Amended	56	7-9-93
201 KAR 18:190		
As Amended	56	7-9-93
201 KAR 20:056		
As Amended	302	8-6-93
201 KAR 20:057		
As Amended	303	8-6-93
201 KAR 20:115		
Repealed	304	8-6-93

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
201 KAR 20:161		
As Amended	304	8-6-93
201 KAR 20:235		
Amended	312	
As Amended	508	
201 KAR 20:260		
As Amended	306	8-6-93
201 KAR 20:390		
Amended	387	
201 KAR 25:031		
Amended	389	
201 KAR 26:115	671	
201 KAR 26:121		
Amended	577	
201 KAR 26:125	672	
201 KAR 26:130		
Amended	579	
201 KAR 26:140		
Amended	580	
201 KAR 26:145	672	
201 KAR 26:151	673	
201 KAR 26:155	674	
201 KAR 26:160		
Amended	583	
201 KAR 26:165	675	
201 KAR 26:171		
Amended	584	
201 KAR 26:175	676	
201 KAR 26:180		
Amended	587	
201 KAR 26:185	677	
201 KAR 26:190		
Amended	588	
201 KAR 26:215	678	
201 KAR 26:230		
Amended	590	
201 KAR 27:012		
As Amended	60	6-11-93
201 KAR 30:080		
As Amended	60	7-9-93
201 KAR 31:020	451	
301 KAR 1:085		
Amended	592	
301 KAR 1:200		
Amended	594	
301 KAR 2:044		
Amended	596	
301 KAR 2:170		
Repealed	62	6-23-93
301 KAR 2:171		
As Amended	62	6-23-93
Amended	599	
301 KAR 2:210		
Repealed	66	6-23-93
301 KAR 2:211		
As Amended	66	6-23-93
301 KAR 2:260	679	
301 KAR 3:030		
Amended	604	
301 KAR 4:100		
As Amended	67	6-23-93
302 KAR 20:054		
As Amended	307	7-21-93
302 KAR 37:010		
Amended	605	
307 KAR 2:010		
As Amended	69	6-25-93
307 KAR 3:010		
As Amended	70	6-25-93
401 KAR 5:036	680	
401 KAR 49:210		
As Amended	72	6-23-93
401 KAR 50:034	693	
401 KAR 50:035		
Amended	607	
401 KAR 50:038	695	
401 KAR 57:061	698	
401 KAR 57:041	164	
401 KAR 58:001	166	
401 KAR 58:020	168	
Amended	522	
401 KAR 59:435	189	
401 KAR 59:450	190	
401 KAR 59:455	192	
401 KAR 59:465	193	
401 KAR 59:485	195	
401 KAR 59:490	197	
401 KAR 59:495	198	
401 KAR 59:500	200	
401 KAR 59:505	202	
401 KAR 59:535	203	
401 KAR 59:540	205	
401 KAR 59:545	207	
401 KAR 59:550	208	
401 KAR 59:555	210	
401 KAR 59:570	211	
401 KAR 59:575	213	
401 KAR 59:580	215	
401 KAR 59:585	216	
401 KAR 59:590	218	
401 KAR 59:595	220	
401 KAR 63:036	221	
Amended	540	
401 KAR 65:001	451	
401 KAR 65:010	454	
402 KAR 2:030	702	
405 KAR 10:050		
Amended	132	
Amended	544	
405 KAR 12:001		
Amended	134	
405 KAR 12:010		
Amended	137	
415 KAR 1:110	706	
415 KAR 1:115	709	
501 KAR 1:040		
As Amended	72	7-12-93
501 KAR 6:020		
Amended	139	
Amended	390	
501 KAR 6:030		
Amended	141	
Amended	392	
Amended	624	
501 KAR 6:050		
Amended	626	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
501 KAR 6:060		
Amended	394	
Amended	627	
501 KAR 6:130		
Amended	143	
Amended	628	
501 KAR 6:140		
Amended	144	
501 KAR 6:150		
Amended	395	
503 KAR 5:130		
As Amended	307	8-6-93
600 KAR 1:100	227	
Amended	545	
600 KAR 3:010		
Amended	397	
601 KAR 9:010		
Amended	629	
601 KAR 9:012		
Amended	414	
601 KAR 9:015		
Amended	415	
601 KAR 9:020		
Amended	416	
601 KAR 9:060		
Amended	417	
601 KAR 9:065		
Amended	417	
601 KAR 9:085		
Amended	418	
601 KAR 9:095		
Amended	419	
601 KAR 11:040		
Amended	145	
602 KAR 50:010		
Amended	148	
603 KAR 3:080	236	
603 KAR 5:230		
Amended	313	
603 KAR 9:010		
As Amended	307	8-3-93
702 KAR 3:190		
Amended	150	
703 KAR 3:060	465	
703 KAR 3:205	241	
704 KAR 3:405		
Amended	152	
704 KAR 4:020		
As Amended	75	
As Amended	509	8-5-93
704 KAR 7:090		
Amended	420	
704 KAR 7:120		
Amended	98	
704 KAR 20:005		
Amended	630	
704 KAR 20:120		
Amended	423	
704 KAR 20:198		
As Amended	77	7-1-93
704 KAR 20:470		
Amended	631	
704 KAR 20:585		
Amended	633	
704 KAR 20:620	711	
705 KAR 2:031	243	
707 KAR 1:160		
Amended	98	
707 KAR 1:170		
Amended	100	
707 KAR 1:180		
Amended	101	
707 KAR 1:190		
Amended	107	
707 KAR 1:200		
Amended	109	
707 KAR 1:210		
Amended	112	
707 KAR 1:220		
Amended	114	
707 KAR 1:230		
Amended	117	
707 KAR 1:250		
Amended	120	
750 KAR 2:010	716	
780 KAR 2:015	244	
780 KAR 3:040		
As Amended	79	7-1-93
780 KAR 3:140		
Amended	154	
780 KAR 4:030	245	
780 KAR 7:035	246	
803 KAR 2:200		
Amended	638	
803 KAR 2:309		
Amended	640	
803 KAR 2:310		
Amended	367	
As Amended	511	
803 KAR 2:320		
Amended	642	
803 KAR 2:403		
Amended	645	
803 KAR 2:500		
Amended	646	
803 KAR 2:600		
Amended	648	
803 KAR 25:092	717	
805 KAR 3:010		
Amended	424	
805 KAR 3:090		
Amended	426	
806 KAR 2:120	247	
806 KAR 2:130	248	
806 KAR 17:090		
As Amended	79	7-12-93
808 KAR 10:160		
Amended	649	
808 KAR 10:290	719	
810 KAR 1:009		
As Amended	81	7-9-93
810 KAR 1:031	466	
811 KAR 1:015		
Amended	428	
811 KAR 1:055		
Amended	432	
811 KAR 1:070		
As Amended	83	7-9-93

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
815 KAR 20:020		
Amended	650	
815 KAR 35:030		
Amended	653	
815 KAR 20:130		
As Amended	309	8-6-93
815 KAR 45:100		
As Amended	85	7-12-93
901 KAR 5:080		
Amended	655	
901 KAR 5:090		
Amended	656	
902 KAR 8:040		
Amended	367	
As Amended	511	
902 KAR 8:050		
Amended	369	
902 KAR 8:060		
Amended	369	
As Amended	513	
902 KAR 8:070		
Amended	371	
902 KAR 8:080		
Amended	373	
As Amended	514	
902 KAR 8:090		
Amended	375	
As Amended	516	
902 KAR 8:100		
Amended	376	
As Amended	517	
902 KAR 8:120		
Amended	377	
902 KAR 20:016		
Amended	121	8-6-93
902 KAR 20:350	719	
902 KAR 50:002		
Amended	657	
902 KAR 50:005		
Amended	658	
902 KAR 55:015		
Amended	659	
902 KAR 55:035		
Amended	660	
903 KAR 5:270		
Amended	155	
904 KAR 3:080		
Amended	661	
905 KAR 2:001	249	
Amended	553	
905 KAR 2:010		
Repealed	31	6-7-93
905 KAR 2:011	250	
905 KAR 2:090	251	
Amended	555	
905 KAR 2:100		
Amended	155	
Amended	556	
905 KAR 2:110	254	
Amended	560	
905 KAR 2:120	256	
Amended	562	
905 KAR 2:130	261	
907 KAR 1:013		
Amended	434	
907 KAR 1:016		
As Amended	87	6-16-93
907 KAR 1:017		
Amended	161	
907 KAR 1:022		
Amended	437	
907 KAR 1:025		
Amended	441	
907 KAR 1:031		
Amended	447	
907 KAR 1:044		
Amended	663	
907 KAR 1:045		
Amended	664	
907 KAR 1:536	472	
908 KAR 1:310		
As Amended	88	6-16-93
908 KAR 2:060		
Amended	666	
908 KAR 2:070		
Amended	380	
As Amended	518	

KRS SECTION	REGULATION
6.666	2 KAR 2:010
6.807	2 KAR 2:010
13A.110	401 KAR 50:034
13A.224	907 KAR 1:536
17.165	905 KAR 2:001
	905 KAR 2:090
	905 KAR 2:100
	905 KAR 2:110
	905 KAR 2:120
	905 KAR 2:130
18A.030	101 KAR 2:100
18A.110	101 KAR 2:100
18A.155	101 KAR 3:010
18A.1976	101 KAR 2:100
42.450-42.495	109 KAR 10:010
45A.800-45A.835	600 KAR 1:100
56.610-56.760	600 KAR 3:010
61.190	45 KAR 1:070
64.840	45 KAR 1:070
64.850	45 KAR 1:070
66.480	45 KAR 1:070
68.300	45 KAR 1:070
132.601	45 KAR 1:070
Chapter 146	402 KAR 2:030
150.010	301 KAR 1:085
	301 KAR 1:200
	301 KAR 2:171
	301 KAR 3:030
150.015	301 KAR 2:044
	301 KAR 2:260
150.025	301 KAR 1:085
	301 KAR 2:044
	301 KAR 3:030
150.105	301 KAR 2:260
150.110	301 KAR 1:085
150.170	301 KAR 1:085
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:171
	301 KAR 2:260
	301 KAR 3:030
150.175	301 KAR 1:085
	301 KAR 2:171
	301 KAR 2:260
150.180	301 KAR 1:085
	301 KAR 2:171
150.190	301 KAR 1:085
150.235	301 KAR 2:260
150.300	301 KAR 2:044
150.320	301 KAR 2:044
150.330	301 KAR 2:044
	301 KAR 2:260
	301 KAR 3:030
150.340	301 KAR 2:044
	301 KAR 2:171
	301 KAR 2:260
150.360	301 KAR 2:044
	301 KAR 2:171
	301 KAR 3:030
150.370	301 KAR 2:171
150.390	301 KAR 2:171
150.395	301 KAR 2:171
150.470	301 KAR 1:200
150.510	301 KAR 1:085
150.520	301 KAR 1:085
150.525	301 KAR 1:085
150.600	301 KAR 2:260
150.603	301 KAR 2:044
150.630	301 KAR 2:260
150.990	301 KAR 1:085
	301 KAR 1:200
	301 KAR 2:171
	301 KAR 2:260
	301 KAR 3:030
151B.025	780 KAR 2:015
151B.030	780 KAR 2:015
151B.035	780 KAR 3:140
151B.110	780 KAR 2:015
	780 KAR 4:030
	780 KAR 7:035
151B.145	780 KAR 2:015
151B.150	780 KAR 7:035
156.035	704 KAR 7:090
	705 KAR 2:031
156.070	705 KAR 2:031
156.111	704 KAR 3:405
Chapter 157	750 KAR 2:010
157.3175	704 KAR 20:620
157.360	702 KAR 3:190
158.645	703 KAR 3:060
158.6451	703 KAR 3:060
158.6453	703 KAR 3:060
158.6455	703 KAR 3:060
158.780	703 KAR 3:205
158.785	703 KAR 3:205
160.350	704 KAR 3:405
161.020	704 KAR 20:005
	704 KAR 20:120
	704 KAR 20:470
	704 KAR 20:620
161.027	704 KAR 20:470
161.028	704 KAR 20:005
	704 KAR 20:120
	704 KAR 20:470
	704 KAR 20:585
161.030	704 KAR 20:005
	704 KAR 20:120
	704 KAR 20:470
	704 KAR 20:620
161.042	704 KAR 20:005
161.100	704 KAR 20:120
161.120	704 KAR 20:585
164.744	11 KAR 10:010
	11 KAR 10:020
164.748	11 KAR 10:010
	11 KAR 10:020
177.830-177.890	603 KAR 3:080
183.861-183.990	602 KAR 50:010
Chapter 186	601 KAR 9:060
186.053	601 KAR 9:020
186.070	601 KAR 9:015
186.174	601 KAR 9:012
186.276	601 KAR 9:010
186.281	601 KAR 9:010
186.650	601 KAR 9:065
186A.115	601 KAR 9:085
186A.145	601 KAR 9:095
194.050	904 KAR 3:080
Chapter 196	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:130
	501 KAR 6:140

KRS SECTION	REGULATION
	501 KAR 6:150
Chapter 197	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:150
199.894-199.898	905 KAR 2:001
	905 KAR 2:011
	905 KAR 2:090
	905 KAR 2:110
	905 KAR 2:120
	905 KAR 2:130
199.898	905 KAR 2:100
199.8982	905 KAR 2:100
205.520	907 KAR 1:013
	907 KAR 1:017
	907 KAR 1:022
	907 KAR 1:025
	907 KAR 1:031
	907 KAR 1:044
	907 KAR 1:045
	907 KAR 1:536
205.575	907 KAR 1:013
210.370-210.460	908 KAR 2:060
Chapter 213	901 KAR 5:080
	901 KAR 5:090
216B.300-216B.320	902 KAR 20:350
216B.990	902 KAR 20:350
217C.010-217C.990	902 KAR 50:002
	902 KAR 50:005
218A.010-218A.030	902 KAR 55:035
218A.010-218A.050	902 KAR 55:015
281A.120-218A.130	902 KAR 55:035
Chapter 224	401 KAR 5:036
	401 KAR 63:036
224.01-010	401 KAR 58:001
	401 KAR 63:036
	401 KAR 65:001
224.10-100	401 KAR 50:034
	401 KAR 50:035
	401 KAR 50:038
	401 KAR 57:041
	401 KAR 57:061
	401 KAR 58:020
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
	401 KAR 63:036

KRS SECTION	REGULATION
	401 KAR 65:001
	401 KAR 65:010
224.10-230	401 KAR 50:038
224.20-050	401 KAR 50:038
224.20-100	401 KAR 50:035
	401 KAR 50:038
	401 KAR 57:041
	401 KAR 58:001
	401 KAR 58:020
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
	401 KAR 63:036
	401 KAR 65:010
224.20-120	401 KAR 50:035
	401 KAR 57:041
	401 KAR 58:001
	401 KAR 58:020
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485

KRS SECTION	REGULATION
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
	401 KAR 63:036
	401 KAR 65:010
224.20-130	401 KAR 50:038
224.20-300	401 KAR 58:020
224.20-320	401 KAR 58:020
224.20-710-224.20-765	401 KAR 65:010
224.60-110	415 KAR 1:115
224.60-120	415 KAR 1:110
224.60-130	415 KAR 1:110
	415 KAR 1:115
224.60-140	415 KAR 1:110
224.70-100	402 KAR 2:030
224.70-110	402 KAR 2:030
224.99-010	401 KAR 58:020
227.450-227.500	815 KAR 35:030
230.300	810 KAR 1:031
230.630	811 KAR 1:015
	811 KAR 1:055
230.640	811 KAR 1:015
	811 KAR 1:055
230.660	811 KAR 1:015
230.700	811 KAR 1:015
230.720	811 KAR 1:015
260.010	302 KAR 37:010
Chapter 262	402 KAR 2:030
281.600	601 KAR 11:040
281.720	601 KAR 9:010
Chapter 281A	601 KAR 11:040
Chapter 292	808 KAR 10:160
	808 KAR 10:290
304.2-250	806 KAR 2:120
304.2-260	806 KAR 2:130
304.2-270	806 KAR 2:130
311.450	201 KAR 25:031
311.565	201 KAR 9:310
	201 KAR 9:315
311.601	201 KAR 9:310
	201 KAR 9:315
314.025	201 KAR 20:390
314.026	201 KAR 20:390
314.027	201 KAR 20:390
Chapter 318	815 KAR 20:020
Chapter 319	201 KAR 26:151
319.005	201 KAR 26:130
319.010	201 KAR 26:115
319.015	201 KAR 26:215
319.032	201 KAR 26:121
	201 KAR 26:180
	201 KAR 26:185
319.050	201 KAR 26:125
	201 KAR 26:155
	201 KAR 26:160
	201 KAR 26:171
	201 KAR 26:175
	201 KAR 26:190
	201 KAR 26:230
319.058	201 KAR 26:160
	201 KAR 26:171
	201 KAR 26:175
	201 KAR 26:230
319.062	201 KAR 26:160
319.064	201 KAR 26:155
	201 KAR 26:160
	201 KAR 26:171
	201 KAR 26:175
	201 KAR 26:230
319.071	201 KAR 26:165
319.082	201 KAR 26:130
	201 KAR 26:145
319.092	201 KAR 26:140
319.118	201 KAR 26:130
319.990	201 KAR 26:130
322A.020	201 KAR 31:020
325.240	201 KAR 1:300
325.340	201 KAR 1:300
Chapter 338	803 KAR 2:200
	803 KAR 2:309
	803 KAR 2:320
	803 KAR 2:403
	803 KAR 2:500
	803 KAR 2:600
341.380	903 KAR 5:270
Chapter 342	803 KAR 25:092
344.030	101 KAR 2:100
Chapter 350	405 KAR 12:001
350.020	405 KAR 10:050
	405 KAR 12:010
350.028	405 KAR 12:010
350.050	405 KAR 12:010
350.060	405 KAR 10:050
350.064	405 KAR 10:050
350.085	405 KAR 12:010
350.093	405 KAR 10:050
350.095	405 KAR 10:050
350.113	405 KAR 12:010
350.130	405 KAR 10:050
	405 KAR 12:010
350.131	405 KAR 10:050
350.151	405 KAR 10:050
	405 KAR 12:010
350.465	405 KAR 10:050
	405 KAR 12:010
350.990	405 KAR 12:010
351.010	805 KAR 3:010
352.010	805 KAR 3:010
352.220	805 KAR 3:090
352.230	805 KAR 3:090
Chapter 439	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:150
PL 103-3	101 KAR 2:100
Ky.Const. §173	45 KAR 1:070
1992 Acts, c. 462	907 KAR 1:013
14 CFR	602 KAR 50:010
21 CFR 1308	902 KAR 55:015

KRS SECTION	REGULATION
	902 KAR 55:035
23 CFR	600 KAR 1:100
	603 KAR 3:080
29 CFR 1910	803 KAR 2:309
	803 KAR 2:320
30 CFR	405 KAR 10:050
	405 KAR 12:001
	405 KAR 12:010
34 CFR 653	11 KAR 10:010
	11 KAR 10:020
40 CFR	401 KAR 50:034
	401 KAR 50:035
	401 KAR 50:038
	401 KAR 57:041
	401 KAR 57:061
	401 KAR 58:020
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
	401 KAR 65:001
	401 KAR 65:010
	415 KAR 1:110
49 CFR	601 KAR 3:010
	601 KAR 11:040
23 USC	600 KAR 1:100
	603 KAR 3:080
30 USC	405 KAR 10:050
	405 KAR 12:001
	405 KAR 12:010
42 USC	401 KAR 50:034
	401 KAR 50:035
	401 KAR 50:038
	401 KAR 57:041
	401 KAR 57:061
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575

KRS SECTION	REGULATION
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
	401 KAR 63:036
	401 KAR 65:001
	401 KAR 65:010
	905 KAR 2:100
42 USC 11432	704 KAR 7:090

SUBJECT INDEX

ACCOUNTANCY BOARD
Rules of professional conduct; 201 KAR 1:300

AERONAUTICS
Airport Zoning Commission
Definitions; 602 KAR 50:010

AGRICULTURE
Hay, grain; 302 KAR Chapter 37

AIR QUALITY
Administrative Procedures
Permit application form; 401 KAR 50:034
Permits; 401 KAR 50:35
Title V emissions fee; 401 KAR 50:038
Asbestos
Controlling asbestos emissions; 401 KAR 58:020
Definitions, abbreviations; 401 KAR 58:001
General Standards of Performance
Stage II, gasoline dispensing facilities; 401 KAR 63:036
Hazardous Pollutants
Benzene waste operations; 401 KAR 57:041
Hazardous air pollutants, source categories; 401 KAR 57:061
Mobile Source Related Emissions
Definitions, abbreviations; 401 KAR 65:001
Vehicle emission control programs; 401 KAR 65:010
New Source Standards
Basic oxygen process furnaces after June 11, 1973; 401 KAR 59:500
Basic oxygen process steelmaking facilities after January 20, 1983; 401 KAR 59:505
Glass manufacturing plants; 401 KAR 59:585
Grain elevators; 401 KAR 59:590
Hot mix asphalt facilities; 401 KAR 59:465
Industrial-commercial-institutional steam generators; 401 KAR 59:435
Kraft pulp mills; 401 KAR 59:580
Metal furniture surface coating; 401 KAR 59:595
Nitric acid plants; 401 KAR 59:455
Phosphate fertilizer, diammonium phosphate plants; 401 KAR 59:545
Phosphate fertilizer, granular triple superphosphate storage facilities; 401 KAR 59:555
Phosphate fertilizer, superphosphoric acid plants; 401 KAR 59:540
Phosphate fertilizer, triple superphosphate plants; 401 KAR 59:550
Phosphate fertilizer, wet-process phosphoric acid plants; 401 KAR 59:535
Secondary brass, bronze production plants; 401 KAR 59:495
Secondary lead smelters; 401 KAR 59:490
Steel, electric arc furnaces after October 21, 1974, before August 17, 1983; 401 KAR 59:570
Steel, electric arc furnaces, argon-oxygen decarburization vessels after August 17, 1983; 401 KAR 59:575
Portland cement plants; 401 KAR 59:450
Volatile organic liquid storage vessels after July 23, 1984; 401 KAR 59:485

AUDITS
(See AUDITOR OF PUBLIC ACCOUNTS)

AUDITOR OF PUBLIC ACCOUNTS
Technical audit bulletins; 45 KAR 1:070

BOARDING HOMES
(See HEALTH SERVICES)

CONGRESSIONAL TEACHER SCHOLARSHIP PROGRAM
(See HIGHER EDUCATION ASSISTANCE AUTHORITY)

CONSERVATION
Soil and water conservation peer group; 402 KAR 2:030

CONTROLLED SUBSTANCES
(See HEALTH SERVICES)

CORRECTIONS
Office of the Secretary
Bell County Forestry Camp; 501 KAR 6:140
Eastern Kentucky Correctional Complex; 501 KAR 6:150
Kentucky State Reformatory; 501 KAR 6:030
Luther Luckett Correctional Complex; 501 KAR 6:050
Northpoint Training Center; 501 KAR 6:060
Policies and procedures; 501 KAR 6:020
Western Kentucky Correctional Complex; 501 KAR 6:130

DISTRICT SUPPORT SERVICES (EDUCATION)
School Administration, Finance
Maximum class sizes; 702 KAR 3:190

ECONOMIC ASSISTANCE
(See Local Government)

EDUCATION, ARTS, AND HUMANITIES
Education
District Support Services
School administration, finance; 702 KAR Chapter 3
Learning Programs Development
Education professional standards board; 704 KAR Chapter 20
Instruction; 704 KAR Chapter 3
Learning support services; 704 KAR Chapter 7
Learning Results Services
Assistance, intervention services; 703 KAR Chapter 3
Special Instructional Services
Fiscal management; 705 KAR Chapter 2

EDUCATION PROFESSIONAL STANDARDS BOARD
(See LEARNING PROGRAMS DEVELOPMENT)

ELECTRICAL INSPECTORS
Certification; 815 KAR 35:030

EMPLOYEES, STATE
(See also PERSONNEL)
Personnel Regulations
Classified; 101 KAR Chapter 2
Unclassified; 101 KAR Chapter 3

EMPLOYMENT SERVICES
Unemployment Insurance
Maximum weekly benefit rates; 903 KAR 5:270

ETHICS
(See LEGISLATIVE ETHICS COMMISSION)

FINANCIAL INSTITUTIONS
Securities
Assistant representative; 808 KAR 10:290
Definitions; 808 KAR 10:160

FISH AND WILDLIFE RESOURCES
Fish
Angling seasons and limits; 301 KAR 1:200
Mussel shell harvesting; 301 KAR 1:085
Game
Crow hunting season; 301 KAR 2:260
Deer hunting seasons; 301 KAR 2:171
Taking of migratory wildlife; 301 KAR 2:044
Hunting, Fishing
Birds, animals, year-round season; 301 KAR 3:030

GENERAL ASSEMBLY
Legislative Ethics Commission; 2 KAR Chapter 2

GEOLOGISTS, BOARD FOR
Board member compensation; 201 KAR 31:020

HARNESS RACING
(See RACING COMMISSION)

HAY, GRAIN
Standard hay grading program; 302 KAR 37:010

HEALTH SERVICES
Controlled Substances
Schedule I substances; 902 KAR 55:015
Schedule V substances; 902 KAR 55:035
Health Services and Facilities
Boarding homes; 902 KAR 20:350
Milk, Milk Products
Grade A milk advisory committee; 902 KAR 50:005
Milk for manufacturing advisory committee; 902 KAR 50:002

HIGHER EDUCATION ASSISTANCE AUTHORITY
Congressional Teacher Scholarship Program
Deferment, reduction of payment; 11 KAR 10:020
Paul Douglas teacher scholarship program; 11 KAR 10:010

HIGHWAYS
Maintenance
Advertising devices; 603 KAR 3:080

HOMELESS CHILDREN
(See LEARNING PROGRAMS DEVELOPMENT)

HOUSING, BUILDINGS AND CONSTRUCTION
Electrical inspectors; 815 KAR Chapter 35
Plumbing; 815 KAR Chapter 20

HUMAN RESOURCES
Administrative Services
Vital statistics; 901 KAR Chapter 5
Employment Services
Unemployment insurance; 903 KAR Chapter 5
Health Services
Controlled substances; 902 KAR Chapter 55
Health services and facilities; 902 KAR Chapter 20
Milk, milk products; 902 KAR Chapter 50
Medicaid services; 907 KAR Chapter 1
Mental Health, Mental Retardation
Mental health; 908 KAR Chapter 2
Social Insurance
Food stamp program; 904 KAR Chapter 3
Social Services
Day care; 905 KAR Chapter 2

INSURANCE
Administration
Filing of examination report; 806 KAR 2:120
Information disclosure, examinations; 806 KAR 2:130

JAIL STANDARDS
(See CORRECTIONS)

JUSTICE
Corrections (See CORRECTIONS)

LABOR
Occupational safety, health; 803 KAR Chapter 2
Workers' compensation; 803 KAR Chapter 25

LEARNING PROGRAMS DEVELOPMENT (EDUCATION)
Education Professional Standards Board
Certificate revocation procedures; 704 KAR 20:585
Emergency certification; 704 KAR 20:120
Interdisciplinary early childhood education; 704 KAR 20:620
Preparation-certification standards; 704 KAR 20:005
Principal intern program; 704 KAR 20:470
Instruction
Superintendent training program, assessment process; 704 KAR 3:405
Learning Support Services
Homeless children education program; 704 KAR 7:090

LEARNING RESULTS SERVICES (EDUCATION)
Assistance, Intervention Services
Determining rewards, sanctions; 703 KAR 3:060
Management improvement program; 703 KAR 3:205

LEGISLATIVE ETHICS COMMISSION
Legislative agent or employer registration statement; 2 KAR 2:010

LOCAL GOVERNMENT
Policy and Management
Economic assistance fund grants; 109 KAR 10:010

MEDICAID SERVICES
Home health services, payments; 907 KAR 1:031
Hospital indigent care assurance program; 907 KAR 1:017
Hospital inpatient services, payments; 907 KAR 1:013
Mental health center services; 907 KAR 1:044
Mental health center services payments; 907 KAR 1:045
Nursing facility, intermediate care facility, mentally retarded; 907 KAR 1:022
Nursing facility, intermediate care facility, mentally retarded, payments; 907 KAR 1:025
Repealer; 907 KAR 1:536

MEDICAL LICENSURE BOARD
Continuing medical education; 201 KAR 9:310
HIV/HBV infection control for physicians; 201 KAR 9:315

MENTAL HEALTH/MENTAL RETARDATION
Mental Health
Plan, budget, billing instructions; reimbursement guidelines; 908 KAR 2:060

MILK, MILK PRODUCTS
(See HEALTH SERVICES)

MINES AND MINERALS
Surface Mining Safety Standards
Definitions; 805 KAR 3:010
Electricity; 805 KAR 3:090

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air quality; 401 KAR Chapters 50 through 65
Water; 401 KAR Chapter 5
Natural Resources
Conservation; 402 KAR Chapter 2
Surface Mining Reclamation, Enforcement; 405 KAR Chapters 10 through 12

NURSING, BOARD OF
Nursing incentive scholarship fund; 201 KAR 20:390

OCCUPATIONS AND PROFESSIONS
Accountancy; 201 KAR Chapter 1
Geologists; 201 KAR Chapter 31
Medical licensure; 201 KAR Chapter 9
Nursing; 201 KAR Chapter 20
Podiatry; 201 KAR Chapter 25
Psychology; 201 KAR Chapter 26

OCCUPATIONAL SAFETY, HEALTH
Confined space entry; 803 KAR 2:200
29 CFR Part 1910; 803 KAR 2:309-803 KAR 2:320
29 CFR Parts 1915, 1917, 1918, 1919; 803 KAR 2:500
29 CFR Part 1926; 803 KAR 2:403
29 CFR Part 1928; 803 KAR 2:600

PERSONNEL
Classified
Leave; 101 KAR 2:100
Unclassified
Leave; 101 KAR 3:010

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION
Contractor certification; 415 KAR 1:115
Contractor costs; 415 KAR 1:110

PLUMBING
Parts or materials list; 815 KAR 20:020

PODIATRY, BOARD OF
Continuing education; 201 KAR 25:031

PSYCHOLOGY BOARD
Application procedures; 201 KAR 26:155
Complaint procedure; 201 KAR 26:130
Continuing education; 201 KAR 26:175
Disciplinary hearings procedures; 201 KAR 26:140
Ethical violations; 201 KAR 26:145
Examinations; 201 KAR 26:230
Fee schedule; 201 KAR 26:160
Health service provider designation; 201 KAR 26:125
Inactive status; 201 KAR 26:165
Nonresident status; 201 KAR 26:215
Out-of-state licensure or certification; 201 KAR 26:185
Psychological testing definition; 201 KAR 26:115
Reciprocity; 201 KAR 26:180
Repealer; 201 KAR 26:151
Scope of practice; 201 KAR 26:121
Supervised professional experience requirements; 201 KAR 26:190
Supervision requirements; 201 KAR 26:171
Temporary license or certificate; 201 KAR 26:155

PUBLIC PROTECTION AND REGULATION CABINET
Financial Institutions
Securities; 808 KAR Chapter 10
Insurance
Administration; 806 KAR Chapter 2
Housing, Buildings and Construction
Electrical inspectors; 815 KAR Chapter 35
Plumbing; 815 KAR Chapter 20
Mines and Minerals
Surface mining safety standards; 805 KAR Chapter 3
Racing Commission
Harness; 811 KAR Chapter 1
Thoroughbred; 810 KAR Chapter 1

RACING COMMISSION
Harness
Declaration to start, drawing horses; 811 KAR 1:055
Race officials; 811 KAR 1:015
Thoroughbred
Intertrack simulcasting; 810 KAR 1:031

SCHOOL FACILITY CONSTRUCTION COMMISSION
Education technology funding program guidelines; 750 KAR 2:010

SOCIAL INSURANCE
Food Stamp Program
Contingency plan; 904 KAR 3:080

SOCIAL SERVICES
Day Care
Child care discipline; 905 KAR 2:130
Child care facility health, safety standards; 905 KAR 2:120
Child care facility licensure; 905 KAR 2:090
Child care facility provider requirements; 905 KAR 2:110
Definitions; 905 KAR 2:001
Family child care homes certification; 905 KAR 2:100
Repealer; 905 KAR 2:011

SPECIAL INSTRUCTIONAL SERVICES (EDUCATION)
Fiscal Management
Repealer; 705 KAR 2:031

SURFACE MINING RECLAMATION, ENFORCEMENT
Bond and Insurance Requirements
Bond forfeiture; 405 KAR 10:050
Inspection and Enforcement
Definitions; 405 KAR 12:001
General provisions; 405 KAR 12:010

THOROUGHBRED RACING
(See RACING COMMISSION)

TOURISM CABINET
Fish and Wildlife Resources
Fish; 301 KAR Chapter 1
Game; 301 KAR Chapter 2
Hunting, fishing; 301 KAR Chapter 3

TRANSPORTATION
Administration
Professional engineering, related services procurement; 600 KAR 1:100
Aeronautics
Airport zoning commission; 602 KAR Chapter 50
Highways
Maintenance; 603 KAR Chapter 3
Property Acquisition and Uniform Relocation
Relocation assistance payments of the cabinet; 600 KAR 3:010
Vehicle Regulation
Commercial driver's license; 601 KAR Chapter 11
Motor vehicle tax; 601 KAR Chapter 9

VEHICLE REGULATION
Commercial Driver's License
Medical waivers, commercial vehicles intrastate operators; 601 KAR 11:040
Motor Vehicle Tax
AVIS information; 601 KAR 9:095
Certified motor vehicle inspector, procedures; 601 KAR 9:095
Commercial vehicle registration plates; 601 KAR 9:060
Demonstrator tag limitation; 601 KAR 9:020
Exempt devices; 601 KAR 9:065
Motor carrier vehicle registration, paying seat tax; 601 KAR 9:010
Motor vehicle dealers, manufacturers registration; 601 KAR 9:015
Personalized license plates; 601 KAR 9:012

VITAL STATISTICS
Burial, disinterment of dead bodies; 901 KAR 5:090
Delayed registration of deaths; 901 KAR 5:080

WATER
Quality
Groundwater protection plans; 401 KAR 5:036

WORKERS' COMPENSATION BOARD
Pharmacy fee schedule; 803 KAR 25:092

WORKFORCE DEVELOPMENT
Facilities and Equipment
Technical institute standards; 780 KAR 7:035
Instructional Programs
Technical degree requirements, postsecondary students; 780 KAR 4:030
Management of the Kentucky Tech System
Administration of technical institutes; 780 KAR 2:015
Personnel System, Certified and Equivalent Employees
Certification, professional development requirements; 780 KAR 3:140