ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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FRIDAY, JUNE 1, 1994

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MEETING NOTICE: The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on June 7, 1994 at 10 a.m. See **tentative** agenda on pages 3163-3164 in this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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Room 131, State Capitol Annex

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Motor Vehicle Commission

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ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
12 KAR 1:115E

This emergency administrative regulation prescribes the methods of sampling, analyzing, and testing seed, and establishes the tolerances to be applied in the administration of the Kentucky Seed Law and regulations. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:115E. Sampling, analyzing, testing, and tolerances.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To prescribe the methods of sampling, analyzing, and testing seed, and to establish the tolerances to be applied in the administration of the Kentucky Seed Law and regulations.

Section 1. The methods of sampling, analyzing, testing and examining seed to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds."

Section 2. The tolerances to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds."

Section 3. Incorporation by Reference. (1) "Rules for Testing Seeds", Vol. 16, No. 3, 1993, Journal of Seed Technology, Association of Official Seed Analysts, is incorporated by reference.
(2) This document may be inspected, copied, or obtained at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:120E

This emergency administrative regulation designates the kinds of weed seed to be considered noxious in Kentucky and establishes their maximum permitted rate of occurrence per pound of agricultural seed. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:120E. Noxious weed seed.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To designate the kinds of weed seed to be considered noxious in Kentucky and to establish their maximum permitted rate of occurrence in agricultural seed.

Section 1. Noxious Weed Seed. (1) The following kinds of weed seed are designated noxious in Kentucky and the maximum permitted rate of occurrence per pound of agricultural seed shall be as follows:

Name of Kind	Allowed Per Pound
Balloon vine (Cardiospermum halicacabum)	0
Purple moonflower (Ipomoea turbinata)	0
Canada thistle (Cirsium arvense)	0
Johnsongrass (Sorghum halepense and sorghum almum) and perennial rhizomatous derivatives of these	0
Quackgrass (Agropyron repens)	0
Annual bluegrass (Poa annua)	256
Buckhorn plantain (Plantago lanceolata)	304
Corncockle (Agrostemma githago)	192
Dodder (Cuscuta spp.)	192
Giant foxtail (Setaria faberii)	192
Oxeye daisy (Chrysanthemum leucanthemum)	256
Sorrel (Rumex acetosella)	256
Wild onion and wild garlic (Allium spp.)	96

(2) Other limitations.
(a) Seed which contains in excess of a sum total of 480 noxious weed seed per pound (subject to the above limitations) is prohibited from sale in Kentucky.
(b) There shall be no tolerance applied to prohibited noxious weed seed.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:125E

This emergency administrative regulation describes the means for identifying seed in storage or in or consigned to a seed cleaning or processing plant, but not offered for sale in locations where some, but not all, seed is for sale. This regulation is needed to facilitate fair and efficient inspection by enforcement officers. To enable effective

enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:125E. Identification of seed not for sale.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To indicate means for identifying seed in storage or in or consigned to a seed cleaning or processing plant, but not offered for sale in locations where some, but not all, seed is for sale. This administrative regulation is needed to facilitate fair and efficient inspection by enforcement officers.

Section 1. The following procedure shall be used if some, but not all, seed in or consigned to a seed cleaning or processing establishment is planned for distribution:

(1) All seed lots shall be maintained separately to prevent the accidental or mechanical mixing of different lots.

(2) All seed not intended for distribution shall be clearly identified with printed signs which indicate the owner or the specific intended use of the seed.

Section 2. All seed intended for distribution shall be plainly identified with a tag on each container, or with a lot number stenciled or taped on each container. If the seed is in a box, frame, crib, wagon, or other enclosed space, that storage space shall be construed to be a container.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:130E

The purpose of this emergency administrative regulation is to prescribe a uniform manner of avoiding contradictory information on printed seed bags and on tags attached to the printed bags in situations where analysis after bagging reveals that a mixture of seed kinds is present rather than a single seed kind. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:130E. Labeling of seed mixtures.

RELATES TO: 1994 Acts c.370
STATUTORY AUTHORITY: 1994 Acts c.370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To prescribe a uniform manner of avoiding contradictory information on printed seed bags and on tags attached to the printed bags in situations where analysis after bagging reveals that a mixture of seed kinds is present rather than a single seed kind.

Section 1. Labeling Tall Fescue and Orchardgrass Seed Mixtures in Printed Bags. (1) Seed of mixtures sold in a bag printed with the words "Kentucky 31 Tall Fescue" on the front (broad) side shall have a seed tag attached that complies with applicable statutes, and the words "and Orchardgrass Mixture" printed or applied by stencil on the front (broad) side of the bag in lettering that is at least one (1) inch high and located no more than three (3) inches from the "Kentucky 31 Tall Fescue" letters.

(2) Seed in a bag on which "Kentucky 31 Tall Fescue" is printed on the back (broad) side shall have the words "and Orchardgrass Mixture" printed on the back (broad) side of the bag and the words "and Orchardgrass Mixture" printed or applied by stencil on the bag in lettering that is at least one (1) inch high and located no more than three (3) inches from the "Kentucky 31 Tall Fescue" letters.

Section 2. The information on the bag of other kinds of mixtures in printed bags shall be the same as the information on the attached tag. If alteration of a printed bag is necessary to show that the seed is a mixture, the alteration shall be accomplished by use of stencil on the bag in lettering that is at least one (1) inch high and that is located no more than three (3) inches from the original lettering.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:135E

This emergency administrative regulation prescribes types of seed tags and prices of each different tag type which is available for purchase from the director. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:135E. Tags available for purchase from the director.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To prescribe types of seed tags

and prices of each different tag type which is available for purchase from the director.

Section 1. Tags may be obtained from the Division of Regulatory Services, College of Agriculture, University of Kentucky. Charges shall be as indicated below:

Form	Kind of Seed	Maximum Bag Weight	Charge (dollars)
A	Alfalfa, clovers and grasses, except mixtures	25 pound	0.08
A	"	50 pound	0.16
A	"	75 pound	0.20
A	"	100 pounds	0.24
B	All other seed except mixtures	25 pound	0.04
B	"	50 pound	0.08
B	"	75 pound	0.12
B	"	100 pounds	0.16
C	Mixtures	25 pound	0.08
C	"	50 pound	0.16
C	"	75 pound	0.20
C	"	100 pounds	0.24

Section 2. If tags are purchased for containers weighing over 100 pounds or for seed in bulk, the number of tags purchased shall be identical to the number which would have been purchased if the seed had been in 100-pound containers.

Section 3. Tags are of two (2) types: unprinted and printed. Unprinted tags are completely blank, whereas printed tags contain the words "Lot," "Seedsman," "Address," "Kind," "Variety," "Pure Seed," "Inert Matter," "Crop Seed," "Weed Seed," "Germination," "Hard Seed," "Date of Test," and "Where Grown" with blank underlined spaces for entry by the tag purchaser of information which applies to the seed being labeled.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:140E

This emergency administrative regulation prescribes procedures to obtain a permit to label and distribute agricultural seed in Kentucky; to pay inspection fees for agricultural seed based upon kind and amount of seed distributed; and to obtain a permit to label and distribute vegetable seed, flower seed, or combination mulch, seed, and fertilizer products in Kentucky. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:140E. Permits, reports, and fees for persons using own tags.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To prescribe procedures to obtain a permit to label and distribute agricultural seed in Kentucky; to pay inspection fees for agricultural seed based upon kind and amount of seed distributed; and to obtain a permit to label and distribute vegetable seed, flower seed, or combination mulch, seed, and fertilizer products in Kentucky.

Section 1. Obtaining Permits. (1) Application for permits to label agricultural seed shall be made on Form RS-64-01c, "Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky."

(2) Application for permits to label vegetable seed, flower seed, or combination mulch, seed and fertilizer products shall be made on Form RS-65-01d, "Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed and Fertilizer Products Sold in Kentucky."

Section 2. Reporting Sales. (1) A person who has been granted a permit to label agricultural seed under the provisions of this subsection shall submit quarterly reports and pay a labeling and inspection fee determined on the basis of quantity of seed sold and on the fee schedule established herein.

(2) Quarters are January through March, April through June, July through September, and October through December. An added assessment of twenty-five (25) dollars or ten (10) percent of the unpaid fee, whichever is greater, shall be made for each seed quarterly report (Form RS-65-02c) received more than forty-five (45) days after the quarter ends.

Section 3. Inspection fee for agricultural seed permit holders shall be:

(1) For packages weighing one (1) pound and up to and including twenty-five (25) pounds:

(a) Alfalfa, clovers, and grasses (including mixtures): eight (8) cents per package.

(b) All other seed: four (4) cents per package.

(2) For packages in excess of twenty-five (25) pounds in weight but not exceeding fifty (50) pounds:

(a) Alfalfa, clovers, and grasses (including mixtures): sixteen (16) cents per package.

(b) All other seed: eight (8) cents per package.

(3) For packages in excess of fifty (50) pounds in weight but not exceeding seventy-five (75) pounds:

(a) Alfalfa, clovers, and grasses (including mixtures): twenty (20) cents per package.

(b) All other seed: twelve (12) cents per package.

(4) For packages in excess of seventy-five (75) pounds in weight but not exceeding 100 pounds:

(a) Alfalfa, clovers, and grasses (including mixtures): twenty- four (24) cents per package.

(b) All other seed: sixteen (16) cents per package.

(5) For packages in excess of 100 pounds and seed distributed in bulk:

(a) Alfalfa, clovers, and grasses (including mixtures): twenty- four (24) cents per 100 pounds.

(b) All other seed: sixteen (16) cents per 100 pounds.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky" (RS-64-01c).

(b) "Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed and Fertilizer Products" (RS-65-01d); and

(c) "Seed Quarterly Report" (RS-65-02c).

(2) These documents may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:145E

This emergency administrative regulation prescribes the registration procedure for seed dealers, noncertified custom seed conditioners, certified seed growers and certified seed conditioners. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:145E. Registration of agricultural seed dealers, noncertified custom seed conditioners, certified seed growers, and certified seed conditioners.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To prescribe the procedures whereby agricultural seed dealers, noncertified custom seed conditioners, certified seed growers and certified seed conditioners register with the Division of Regulatory Services.

Section 1. Agricultural seed dealers (persons who distribute agricultural seed in containers of forty (40) pounds or more at retail) shall register using Form RS-65-03a, "Dealer Registration." A twenty-five (25) dollar registration fee shall accompany the submitted application form.

Section 2. Noncertified custom seed conditioners shall register using Form RS-65-03c, "Noncertified Custom Seed Conditioner Registration." A twenty-five (25) dollar registration fee shall accompany the submitted application form.

Section 3. Registration of certified seed growers and certified seed conditioners shall be accomplished by an exchange of records between the Kentucky Seed Improvement Association and the Division of Regulatory Services.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form RS-65-03a, "Agricultural Seed Dealer Registration."

(b) Form RS-65-03c, "Noncertified Custom Seed Conditioner Registration."

(2) These documents may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:150E

This emergency administrative regulation provides a means of taking administrative action in the form of a "Stop Sale Order" on seed found by analysis, test, examination, or representation to be in violation of the Kentucky Seed Law. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:150E. Stop sale orders.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To provide a means of taking administrative action in the form of a "Stop Sale Order" on seed found by analysis, test, examination, or representation to be in violation of the Kentucky Seed Law.

Section 1. A written or verbal (followed by a written) stop sale order may be issued on any lot of seed found by analysis, test or examination, or upon examination of the label or other graphic or printed representations, or any lot which the director has reasonable cause to believe is in violation of the Kentucky Seed Law and regulations pertaining thereto. Seed under a stop sale order shall not be sold, exposed or offered for sale and shall not be moved from the point where the stop sale order was issued until requirements of the Kentucky Seed Law and regulations have been met and a release has been issued by the director.

Section 2. Conditions for release shall be:

(1) Correction of the deficiencies for which the stop sale order was issued; and

(2) A request in writing or by phone (followed by written request) by the person to whom the stop sale order was issued.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference: "Notice of violation and stop sale" (RS-30-5c).

(2) This document may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30

p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:155E

This emergency administrative regulation establishes a schedule of charges for service tests, analysis, and examination of seed samples in the Kentucky Agricultural Experiment Station Seed Laboratory. Service tests provide information needed to label agricultural seed. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:155E. Schedule of charges for samples submitted for testing.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To establish a schedule of charges for service tests, analysis, and examination of seed samples in the Kentucky Agricultural Experiment Station Seed Laboratory.

Section 1. The following service charges shall be assessed for samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory:

(1) Basic charge list.

Kind of Seed	Complete Test	Purity and Noxious Weed Test	Germination Only
Alfalfa	$14.00	$ 7.00	$ 8.00
Bentgrass	16.00	12.00	8.00
Bermudagrass	16.00	12.00	8.00
Bluegrass	16.00	12.00	10.00
Bromegrass	16.00	12.00	8.00
Cereals	11.00	5.00	7.00
Clovers	14.00	7.00	8.00
Corn	14.00	7.00	8.00
Crownvetch	14.00	7.00	8.00
Fescue	15.00	8.00	8.00
Lespedeza	14.00	8.00	7.00
Lovegrass	16.00	12.00	8.00
Millet	11.00	5.00	7.00
Orchardgrass	18.00	11.00	8.00
Redtop	16.00	12.00	8.00
Ryegrass	18.00	6.00	8.00
Sorghum-Sudangrass	11.00	5.00	7.00
Soybean	12.00	6.00	7.00
Sudangrass	11.00	5.00	7.00
Timothy	14.00	7.00	8.00
Tobacco	16.00	12.00	8.00
Vegetables	14.00	10.00	7.00
Vetch	11.00	5.00	7.00

(2) Nonresidents will be assessed an additional charge of two (2) dollars per sample. Any Kentucky citizen may submit one (1) seed sample per year for a complete test free of charge provided the sample is accompanied by a signed statement: "I certify that I have not previously submitted a sample for free test during the current calendar year."

(3) A complete test includes a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination test.

(4) Purity and noxious weed includes a purity analysis and a noxious weed seed examination (for only those seed designated as noxious in Kentucky).

(5) In ryegrass samples, a complete test includes a fluorescence test which distinguishes perennial ryegrass seed and annual ryegrass seed.

(6) Mixtures, difficult, or dirty samples may be charged an additional eight (8) dollars per hour for extra separation time. Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.

(7) Rush service may be provided upon request at an additional charge of fifteen (15) dollars per sample.

(8) Schedule of charges for special tests:

(a) Noxious weed seed examination for Kentucky only: eight (8) dollars.

(b) Noxious weed seed examination for any other or for all states: ten (10) dollars.

(c) Moisture test: four (4) dollars.

(d) Seed count per pound: four (4) dollars.

(e) Soybean hypocotyl color test: twelve (12) dollars.

(f) Vigor test (accelerated aging): nine (9) dollars.

(g) Tetrazolium test: twelve (12) dollars.

(h) Phenol test of wheat: twelve (12) dollars.

(i) Peroxidase test of soybeans: twelve (12) dollars.

(j) Seed or plant tall fescue endophyte:

1. One (1) to fifty (50) specimens of same seed lot or uniquely identified group of plants: thirty-five (35) dollars.

2. Fifty-one (51) to 100 specimens of same seed lot or uniquely identified group of plants: sixty (60) dollars.

3. 101 to 150 specimens of same seed lot or uniquely identified group of plants: eighty-five (85) dollars.

(k) Reexamination of a sample to secure information not requested initially, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law may be assessed eight (8) dollars per hour for analytical time.

(9) Charges for kinds not listed above shall be in accord with charges made for other kinds of seed of similar size.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:160E

This emergency administrative regulation designates the kinds of seed for which labeling of variety name is not required. For all other kinds, the variety name is an essential part of the information on the label. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:160E. Seed not required to be labeled by variety name.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To designate the kinds of seed for which labeling of variety name is not required. For all other kinds, the variety name is an essential part of the information on the label.

Section 1. The following kinds of seed are omitted from the requirement for labeling to show the variety name and the statement "Variety Unknown":
(1) Bermudagrass (Cynodon dactylon).
(2) Bluegrass, Canada (Poa compressa).
(3) Bluegrass, Rough (Poa trivialis).
(4) Bromegrass, Field (Bromus arvensis).
(5) Buckwheat (Fagopyrum esculentum).
(6) Canarygrass (Phalaris canariensis).
(7) Clover, Alsike (Trifolium hybridum).
(8) Fescue, Chewings (Festuca rubra, var commutata).
(9) Fescue, Meadow (Festuca elatior).
(10) Lespedeza, Korean (Lespedeza stipulacea).
(11) Lespedeza, Striate (Lespedeza striata).
(12) Lovegrass, Sand (Eragrostis trichodes).
(13) Lovegrass, Weeping (Eragrostis curvula).
(14) Millet, Browntop (Panicum ramosum).
(15) Millet, Foxtail (Setaria italica).
(16) Millet, Japanese (Echinochloa crusgalli).
(17) Millet, Proso (Panicum miliaceum).
(18) Rape (Brassica spp.).
(a) Annual (B. napus, var annua).
(b) Turnip, Annual or Bird (B. campestris).
(c) Turnip, Biennial (B. campestris, var autumnalis).
(19) Redtop (Agrostis alba).
(20) Sweetclover, White (Melilotus alba).
(21) Sweetclover, Yellow (Melilotus officinalis).
(22) Vetch, Common (Vicia sativa).
(23) Vetch, Hairy (Vicia villous).

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:165E

This emergency administrative regulation prescribes standards for vegetable seed germination. If germination is equal to or above the standard, only the year for which the seed was packed must be shown. If germination is below the standard, the exact germination percentage must be shown. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:165E. Germination standards for vegetable seed.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To prescribe standards for vegetable seed germination. If germination is equal to or above the standard, only the year for which the seed was packed must be shown. If germination is below the standard, the exact germination percentage must be shown.

Section 1. The following standards for the germination of the kinds of vegetable and herb seed listed below are hereby adopted:

Kind	Percent
Anise	50
Basil, Sweet	70
Caraway	55
Chervil, Salad	65
Coriander	70
Corn, Pop	75
Dill	60
Fennel, Florence	60
Fennel, Sweet	50
Oregano	60
Marjoram, Sweet	50
Peanut	60
Roquette	60
Rosemary	30
Sage	60
Savory, Summer	55
Thyme	50

The germination standard for all other vegetable and herb seed for which standards have not been established shall be fifty (50) percent.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
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STATEMENT OF EMERGENCY
12 KAR 1:170E

This emergency administrative regulation prescribes standards for flower seed lists those kinds for which standard testing procedures are prescribed. The information required to be shown on the label is dependent upon whether or not standard testing procedures have been prescribed and whether or not a lot being labeled falls above or below the standard. To enable effective enforcement of the newly passed Kentucky Seed Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:170E. Germination standards for flower seed.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To prescribe standards for flower seed and to list those kinds for which standard testing procedures are prescribed. The information required to be shown on the label is dependent upon whether or not standard testing procedures have been prescribed and whether or not a lot being labeled falls above or below the standard.

Section 1. Flower Seed Standards. (1) The kinds of flower seed listed below are those for which standard testing procedures have been prescribed. Common names are listed first, followed by Latin names. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, the percentage is the total of percentage germination and percentage hard seed. For other kinds, it is the percentage germination.

Kind	Germination %
Archillea (The Pearl) - Achillea ptarmica	50
African daisy - Dimorphotheca aurantiaca	55
African violet - Saintpaulia spp.	30
Ageratum - Ageratum mexicanum	60
Agrostemma (rose campion) - Agrostemma coronaria	65
Alyssum - Alyssum compactum, A. maritimum, A. procumbens, and A. saxatile	60
Amaranthus - Amaranthus spp.	65
Anagalis (Primpernel) - Anagalis arvensis, A. coerulia, and A. grandiflora	60
Anemone - Anemone coronaria, and A. pulsatilla	55
Angel's trumpet - Datura arborea	60
Arabis - Arabis alpina	60
Arctotis (African lilac daisy) - Arctotis grandis	45
Armeria - Armeria formosa	55
Asparagus, Fern - Asparagus plumosus	50
Asparagus, Sprenger - Asparagus sprengeri	55
Aster, China - Callistephus chinensis; except Pompon, Powderpuff, and Princess types	55
Aster, China - Callistephus chinensis; Pompon, Powderpuff, and Princess types	50
Aubretia - Aubretia deltoides	45
Baby Smilax - Aparagus asparagoides	25
Balsam - Impatiens balsamina	70
Begonia - (Begonia fibrous rooted)	60
Begonia - (Begonia tuberous rooted)	50
Bells of Ireland - Molucella laevis	60
Brachycome (Swan River daisy) - Brachycome iberidifolia	60
Browallia - Browallia elata and B. speciosa	65
Bupthalum (Sunwheel) - Buphthalum salicifolium	60
Calceolaria - Calceolaria spp.	60
Calendula - Calendula officinalis	65
California poppy - Eschscholtzia californica	60
Calliopsis - Coreopsis bicolor, C. drummondi, and C. elegans	65
Campulana	
Canterbury bells - Campanula medium	60
Cup and saucer bellflower - Campanula medium calycanthema	60
Carpathian bellflower - Campanula carpatica	50
Peach bellflower - Campanula persicifolia	50
Candytuft, Annual - Iberis amara, and I. umbellata	65
Candytuft, Perennial - Iberis gibraltarica, and I. sempervirens	55
*Castor bean - Ricinus communis	60
Cathedral bells - Cobaea scandens	65
Celosia - Celosia argentea	65
Centaurea: Basket flower - Centaurea americana, Cornflower - C. cyanus, Dusty miller - C. candidissima, Royal Centaurea - C. imperialis, Sweet sultan - C. moschata, and Velvet Cantaurea - C. gymnocarpa	60
Cerastium (Snow-in-summer) - Cerastium biebersteini and C. tomentosum	65
Chinese forget-me-not - Cynoglossum amabile	55
Chrysanthemum, Annual - Chrysanthmum carinatum, C. coronarium, and C. segetum	40
Cineraria - Senecio cruentus	60
Clarkia - Clarkia elegans	65
Cleome - Cleome gigantea	65
Coleus - Coleus blumei	65
Columbine - Aquilegia spp.	50
Coral bells - Heuchera sanguinea	55
Coreopsis, Perennial - Coreopsis lanceolata	40
Corn, Ornamental - Zea mays	75
Cosmos:	
Sensation, Mammoth, and Crested types - Cosmos bipinnatus; and	
Klondyke type - C. sulphureau	65
Crossandra - Crossandra infundibuliformis	50
Dahlia - Dahlia spp.	55
Daylily - Hemerocallis spp.	45
Delphinium, Perennial: Belladonna and Bellamosum types; Cardinal larkspur - Delphinium cardinale; Chinensis types; and Pacific giant, Gold medal, and other hybrids of D. elatum	55
Dianthus:	
Carnation - Dianthus caryophyllus	60
China pinks - Dianthus chinensis, D. heddewigi, and D. heddensis	70
Grass pinks - Dianthus plumarius	60
Maiden pinks - Dianthus deltiodes	60
Sweet William - Dianthus barbatus	70
Sweet Wivelsfield - Dianthus allwoodi	60
Didiscus (Blue lace flower) - Didiscus coerulea	65
Doronicum (Leopard's bane) - Doronicum caucasicum	60
Dracaena - Dracaena indivisa	55
Dragon tree - Dracaena draco	40
English daisy - Bellis perennis	55
Flax:	
Golden flax - Linum flavum, Flowering flax - L. grandiflorum, and Perennial flax - L. perenne	60
Flowering maple - Abutilon spp.	35
Foxglove - Digitalis spp.	60
Gaillardia, Annual - Gaillardia pulchella and G. picta	45
Gaillardia, Perennial - G. grandiflora	45
Gerbera (transvaal daisy) - Gerbera Jamesoni	60
Geum - Geum spp.	55
Gilia - Gilia spp.	65
Glosiosa daisy (rudbeckia) - Echinacea purpurea	

and Rudbeckia hirta	60
Gloxinia - Sinningia speciosa	40
Godetia - Godetia amoena and G. grandiflora	65
Gourds:	
Yellow flowered - Cucurbita pepo, White flowered - Lagenaria sisceraria, and Dishcloth - Luffa cylindrica	70
Gypsohilia:	
Annual baby's breath - Gypsophila elegans; and Perennial baby's breath - G. paniculata, G. pacifica, and G. repens	70
Helenium - Helenium autumnale	40
Helichrysum - Helichrysum monstrosum	60
Heliopsis - Heliopsis scabra	55
Heliotrope - Heliotropium spp.	35
Helipterum (Acroclinium) - Helipterum roseum	60
Hesperis (Sweet rocket) - Hesperis matronalis	65
*Hollyhock - Althea rosea	65
Hunnemania (Mexican tulip poppy) - Hunnemania fumariaefolia	60
*Hyacinth bean - Dolichos lablab	70
Impatiens - Impatiens holstii and I. sultani	55
*Ipomea:	
Cypress vine - Ipomea quamoclit; Moonflower - I. noctiflora; and Morning glories, Cardinal climber, Hearts and Honey vine - Ipomea spp.	75
Jurusulem cross (Maltese cross) - Lychnis chalcedonica	70
Job's tears - Coix lacrymajobi	70
Kochia - Kochia childsi	55
Larkspur, Annual - Delphinium ajacis	60
Lantana - Lantana camara, L. hybrida	35
Lilium (Regal lily) - Lilium regale	50
Linaria - Linaria spp.	65
Lobelia, Annual - Lobellia erinus	65
Lunaria, Annual-Lunaria annua	65
*Lupine - Lupinus spp.	65
Marigold - Tagetes spp.	65
Marvel of Peru - Mirabilis jalapa	60
Matricaria (Feverfew) - Matricaria spp.	60
Mignonette - Reseda odorata	55
Myosotis - Myosotis alpestris, M. oblongata, and M. palustris	50
Nasturtium - Tropaeolum spp.	60
Nemesia - Nemesia spp.	65
Nemophila - Nemophila insignis	70
Nemophila, Spotted - Nemophila maculata	60
Nicotiana - Nicotiana affinis, N. sanderae, and N. sylvestris	65
Nierembergia - Nirembergia spp.	55
Nigella - Nigella damascena	55
Pansy - Viola tricolor	60
Penstemon - Penstemon barbatus, P. grandflorus, P. laevigatus, and P. pubescens	60
Petunia - Petunia spp.	45
Phacelia - Phacelia campanularia, P. minor, and P. tanacetifolia	65
Phlox, Annual - Phlox drummondi (all types and varieties)	55
Physalis - Physalis spp.	60
Platycodon (Balloon flower) - Platycodon grandiflorum	60
Plumbago, Cape - Plumbago capensis	50
Ponytail - Beaucarnea recurvata	40
Poppy:	
Shirley poppy - Papaver rhoeas, Iceland poppy - Papaver nudicaule, Oriental poppy - P. orientale, and Tulip poppy - P. glaucum	60
Portulace - Portulaca grandiflora	55
Primula (primrose) - Primula spp.	50
Pyrethrum (painted daisy) - Pyrethrum coccineum	60
Salpiglossis - Salpiglossis gloxinaeflora and S. sinuata	60
Salvia:	
Scarlet sage - Salvia splendens, and Mealycup sage (Blue bedder) - Salvia farinacea	50
Saponaria - Saponaria ocymoides and S. vaccaria	60
Scabiosa, Annual - Scaboisa atropurpurea	50
Scabiosa, Perennial - Scaboisa caucasica	40
Schizanthus - Schizanthus spp.	60
*Sensitive plant (mimosa) - Mimosa pudica	65
Shasta daisy - Chrysanthemum maximum and C. leucanthemum	65
Silk oak - Grevillea robusta	25
Snapdragon - Antirrhinum spp.	55
Solanum - Solanum spp.	60
Statice - Statice sinuata and S. suworonii (flower heads)	50
Stocks:	
Common - Mathiola incana and Evening scented - Mathiola bicornis	65
Sunflower - Helianthus spp.	70
Sunrose - Helianthemum spp.	30
*Sweet pea, Annual and Perennial other than dwarf bush - Lathyrus odoratus and L. latifolius	75
*Sweet pea, Dwarf bush - Lathyrus odoratus	65
Tahoka daisy - Machaeanthera tanacetifolia	60
Thunbergia - Thunbergia alata	60
Torch flower - Tithonia speciosa	70
Torenia (Wishbone flower) - Torenia fournieri	70
Tritoma - Kniphofia spp.	65
Verbena, Annual - Verbena hybrida	35
Vinca - Vinca rosea	60
Viola - Viola cornuta	55
Virginian stocks - Malcolmia maritima	65
Wallflower - Cheiranthus allioni	65
Yucca (Adam's needle) - Yucca filamentosa	50
Zinna (except Linearis and Creeping) Zinnia angustifolia, Z. elegans, Z. grandiflora, Z. gracillima, Z. haegeana, Z. multiflora, and Z. pumila	65
Zinnia, Linearis and Creeping - Zinnia linearis and Sanvitaila procumbens	50
All other kinds	50

(2) A mixture of kinds of flower seed will be considered to be below the standard if the germination of any kind or combination of kinds constituting twenty-five (25) percent or more of the mixture by number is below standard for the kind or kinds involved.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 1:175E

This emergency administrative regulation prescribes the manner in which seed shall be certified in Kentucky. To prescribe the procedure for certifying seed for varietal purity in Kentucky. Certification assures genetic identity and purity of superior plant varieties. To enable effective enforcement of the newly passed Kentucky Seed

Law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:175E. Seed certification in Kentucky.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To prescribe the procedure for certifying seed for varietal purity in Kentucky. Certification assures genetic identity and purity of superior plant varieties.

Section 1. Certification Procedure. (1) The procedures and standards established in the Kentucky Certified Seed Handbook shall be applied to all seed certified in Kentucky.

(2) Incorporation by reference.

(a) "Kentucky Seed Certification Standards," Kentucky Seed Improvement Association, P. O. Box 12008, Lexington, KY, June 18, 1994, is incorporated by reference.

(b) This document may be inspected, copied, or obtained at the Division of Regulatory Services, 101 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
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STATEMENT OF EMERGENCY
12 KAR 6:010E

This emergency administrative regulation prescribes the procedure for persons who distribute tobacco seedlings or finished tobacco plants to register as dealers, as is mandated in the tobacco seedling law. The fee for registration is $25 per year. To enable Kentucky tobacco seedling dealers to register for the current tobacco planting season, as is required in the newly passed tobacco seedling law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 6:010E. Dealer registration.

RELATES TO: 1994 Acts c. 333
STATUTORY AUTHORITY: 1994 Acts c. 333
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To prescribe the procedure for persons who distribute tobacco seedlings or finished tobacco plants to register as dealers, as is mandated in the tobacco seedling law.

Section 1. Registration Form. (1) Application shall be made on Form RS-65-02e, "Tobacco seedling or finished tobacco plant dealer registration form."

(2) A twenty-five (25) dollar registration fee shall accompany the submitted application form.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference: Form RS-65-02e, "Tobacco Seedling and Finished Tobacco Plant Dealer Registration Form."

(2) This document may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
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STATEMENT OF EMERGENCY
12 KAR 6:015E

This emergency administrative regulation prescribes the procedure for persons to obtain permits to label tobacco seedlings and finished tobacco plants and to report sales and pay inspection fees. The fee for obtaining a labeling permit is $50 per year. The inspection fee is 15 cents per thousand for tobacco plugs and 25 cents per thousand for finished tobacco plants. To enable persons who label tobacco seedlings or finished tobacco plants to do so legally in the current tobacco planting season as is required in the newly passed tobacco seedling law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 6:015E. Permit to label tobacco seedlings or finished tobacco plants for distribution in Kentucky, reports of sales, and payment of inspection fees.

RELATES TO: 1994 Acts c. 333
STATUTORY AUTHORITY: 1994 Acts c. 333
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To prescribe the procedure for persons to obtain permits to label tobacco seedlings and finished tobacco plants and to report sales and pay inspection fees.

Section 1. Application for Permit. (1) Application shall be made on Form RS-65-02f, "Application for permit to label tobacco seedlings or finished tobacco plants for distribution in Kentucky." A fifty (50) dollar registration fee shall accompany the submitted application form.

(2) Sales shall be reported on "Report of sales of tobacco seedlings and finished tobacco plants." The report and accompanying payment shall be submitted to the director no later than December 1 of the year in which the sales occurred.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form RS-65-02f, "Application for permit to label tobacco seedlings or finished tobacco plants for distribution in Kentucky."

(b) Form RS-65-02d, "Report of sales of tobacco seedling and

finished tobacco plants."

(2) These documents may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
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STATEMENT OF EMERGENCY
12 KAR 6:020E

This emergency administrative regulation describes the manner in which a person shall identify all tobacco seedlings or finished tobacco plants in a warehouse, salesroom, greenhouse, nursery, or other place when some, but not all, of the plants will be distributed. To enable a fair and efficient inspection of tobacco seedlings or finished tobacco plants being sold in Kentucky during the current tobacco planting season as is required in the newly passed tobacco seedling law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 6:020E. Identification of tobacco seedlings or finished tobacco plants not for sale.

RELATES TO: 1994 Acts c. 333
STATUTORY AUTHORITY: 1994 Acts c. 333
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To describe the manner in which a person shall identify all tobacco seedlings or finished tobacco plants in a warehouse, salesroom, greenhouse, nursery, or other place when some, but not all, of the plants will be distributed. This regulation is needed to facilitate fair and efficient inspection by enforcement officers.

Section 1. The following procedure shall be used if some, but not all, tobacco seedlings or finished tobacco plants in a warehouse, salesroom, greenhouse, nursery, or other place, are to be distributed.

(1) Producers shall maintain separation of all tobacco seedling and finished tobacco plants to prevent the accidental or mechanical mixing of trays of different lots.

(2) All plants not intended for distribution shall be clearly identified with printed signs which indicate the specific use to which the plants will be put.

(3) All tobacco seedlings or finished tobacco plants intended for distribution shall be plainly identified by lot number and the name of the type and variety through use of labels attached to each container or by printed signs for clearly defined groups of containers.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
12 KAR 6:025E

This emergency administrative regulation prescribes the procedure for issuing a "Stop sale order" on tobacco seedlings or finished tobacco plants found upon inspection to be in apparent violation of the Kentucky Seedling Law. Because administrative action may be required to stop sale of illegal tobacco seedlings or finished tobacco plants during the current tobacco planting season, as is required in the newly passed tobacco seedling law, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on April 28, 1994.

BRERETON C. JONES, Governor
C. ORAN LITTLE, Dean and Director

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 6:025E. Notice of violation and stop sale.

RELATES TO: 1994 Acts c. 333
STATUTORY AUTHORITY: 1994 Acts c. 333
EFFECTIVE: May 13, 1994
NECESSITY AND FUNCTION: To provide for a means of administrative action in the form of a "Stop Sale Order" on tobacco seedlings or finished tobacco plants found upon inspection to be in apparent violation of the Kentucky Tobacco Seedling Law or regulations.

Section 1. A written or verbal (followed by a written) stop sale order may be issued on any lot of tobacco seedlings or finished plants found upon examination to be visibly unhealthy or diseased or to not be labeled in accordance with the Kentucky Tobacco Seedling Law. Written stop sale orders shall be issued by means of Form RS-30-5c, "Notice of violation and stop sale," and release of the stop sale order shall be requested by entry in the appropriate locations of Form RS-30-5c by the person to whom the stop sale order was issued. Verbal release preceding written release may be made by the director.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference: Form RS-30-5c, "Notice of violation and stop sale."

(2) This document may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
600 KAR 1:101E

This emergency administrative regulation is necessary to replace administrative regulation 600 KAR 1:100 which, pursuant to KRS 13A.333, expires upon adjournment of the regular session of the 1994 General Assembly. The administrative regulation was found deficient by the Administrative Regulations Review Subcommittee because it conflicted with KRS 45A.825(1). The conflict was the date of the expiration of the prequalification of the engineering and architectural

firms. House Bill 242 enacted at the regular session of the 1994 General Assembly, when effective in July, 1994, amends KRS 45A.825(1) so that the provisions of 600 KAR 1:100 will no longer be in conflict. This emergency administrative regulation promulgates the provisions of 600 KAR 1:100 in a new administrative regulation to allow the procurement process relating to engineering and architectural services in the Transportation Cabinet to continue. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed in contemplation of statute with the Regulations Compiler on April 11, 1994.

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

TRANSPORTATION CABINET

600 KAR 1:101E. Procurement of professional engineering and related services.

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

EFFECTIVE: April 15, 1994

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.

(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, agreed upon between a firm 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 firm contracted to a prime firm for the performance of work contracted by the cabinet to the prime firm.

(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, 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 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) 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) 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) 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.

(5) The criteria for prequalification to be used by the user divisions and offices are listed in the appendix to the Consulting Engineer and Related Services Prequalification Application as adopted August 11, 1993 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)(a) The Division of Specialized Programs shall notify each firm of all evaluation results 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)(a) A prequalified firm shall annually submit qualification and performance data on or prior to its 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) 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) The user division or office 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) The basis of the appeal and the relief sought shall be stated in the written communication to the chairman.

(6)(a) Within sixty (60) days from receipt of an appeal, the committee members or their designees shall review the appeal and shall make a 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) The committee shall notify the State Highway Engineer and the firm of its decision.

(8) 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) 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.

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;

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 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 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 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 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, 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 written approval to contract for a firm to perform professional engineering or related services, the secretary of the cabinet, 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.

(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) 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)(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 subconsul-

tants.

(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) Travel expenses for firm employees or survey crews shall be limited to those incurred from an office in Kentucky;

(e) 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 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.

(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; 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).

(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 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 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 public shall not be denied access to the items set forth in paragraph (a) of this subsection.

(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. 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. 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 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. 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. 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. 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. 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. 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. 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: April 4, 1994
FILED WITH LRC: April 15, 1994 at 4 p.m.

STATEMENT OF EMERGENCY
601 KAR 13:011E

This emergency administrative regulation is necessary to replace administrative regulation 601 KAR 13:010 which, pursuant to KRS 13A.333, expires upon adjournment of the regular session of the 1994 General Assembly. The administrative regulation was found deficient by the Administrative Regulations Review Subcommittee because the subcommittee felt that the Transportation Cabinet lacked the specific authority necessary to promulgate an administrative regulation relating to a Medical Review Board. House Bill 417 and Senate Bill 205 enacted at the regular session of the 1994 General Assembly, when effective in July, 1994, amends KRS 186.570 so that the Transportation Cabinet has the specific authority necessary to establish the Medical Review Board. This emergency administrative regulation promulgates the provisions of 601 KAR 13:010 in a new administrative regulation to allow the process relating to evaluating a person's ability to safely operate a motor vehicle to continue. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed in contemplation of statute with the Regulations Compiler on April 11, 1994.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:011E. Medical Review Board; basis for examination, evaluation, tests.

RELATES TO: KRS 186.570
STATUTORY AUTHORITY: KRS 186.400, 1994 GA Senate Bill 205, House Bill 417
EFFECTIVE: April 15, 1994
NECESSITY AND FUNCTION: The Medical Review Board has existed by virtue of administrative regulations since June, 1964. The 1994 General Assembly passed two (2) bills, SB 205 and HB 417, mandating the establishment of the Medical Review Board. Statutory authority was necessary because the Administrative Regulations Review Subcommittee determined in late 1993 that the Transportation Cabinet does not have the specific authority necessary to promulgate an administrative regulation relating to the Medical Review Board and, therefore, 601 KAR 13:010 expired on April 15, 1994. Because of a slight conflict between SB 205 and HB 417, until LRC's Statutes Reviser determines what has truly been enacted, the Transportation Cabinet is repromulgating the expired regulation. As soon as the new statutory language is established, this new administrative regulation will be amended. In the meantime, persons who come to the Transportation Cabinet's attention because of a physical or mental disability which may affect their driving ability will continue to be evaluated as in the past. The results of a physical examination are reviewed by the members of the board. Based on their professional experience, the members recommend either total denial of a license or a limited one (e.g., daylight hours, left and right rearview mirrors, another examination in three (3) months, etc.), or they determine that the person's disability suffered should not affect the person's driving ability. This negates the capriciousness which could exist in the great discretion granted the department by the legislature in KRS 186.570 prior to its 1994 amendment. However, the recommendation of the board is for suspension or an extremely limited license, the subject is entitled to a hearing on the matter (since the Supreme Court's BELL v. BURSON decision) and this regulation sets out the procedure for same.

Section 1. There is hereby created a Medical Review Board to determine whether any applicant for or any holder of a valid Kentucky operator's license has physical or mental infirmities which affect or limit the driving ability or make it unsafe for said person to operate a motor vehicle upon the public highways. The board shall consist of the Commissioner of the Department of Vehicle Regulation of the Transportation Cabinet or his representative, not less than three (3) physicians licensed to practice medicine in the Commonwealth of Kentucky, and anyone else deemed necessary to properly review a case brought before the board. The physicians on the board shall be appointed by the Commissioner of the Department of Vehicle Regulation. The Commissioner of the Department of Vehicle Regulation or his representative shall prescribe the time and place for the board to meet. Any proceeding conducted by the board shall be construed to be a meeting within the meaning of this section when three (3) physician members are present and participating. Members of the board who participate in a meeting shall be reimbursed for necessary expenses incurred in attending such meeting.

Section 2. (1) When the Commissioner of the Department of Vehicle Regulation or his representative receives notice that one (1) or more of the conditions listed in Section 4 of this regulation exists in a person and that such physical or mental infirmities may render it unsafe for him to operate a motor vehicle upon the public highways, the commissioner shall refuse to issue an operator's license to said person or he shall suspend the existing driving privilege of said person unless the person submits to an examination by a qualified physician within forty-five (45) days of notification of the commissioner's intentions.

(2) If the Medical Review Board deems that an examination by a qualified physician is necessary, the required medical examination shall be conducted at the person's own expense by any licensed physician of his choice. The examining physician shall report within forty-five (45) days the results of his examination directly to the Medical Review Board on a form furnished by the Department of Vehicle Regulation.

(3) As soon as possible after receipt of the completed form, the Medical Review Board shall evaluate it and may make recommendations to the Department of Vehicle Regulation for further examination or testing or on restriction of the person's driving privilege. When the board recommends further examination or investigative testing, the Commissioner of the Department of Vehicle Regulation or his representative shall notify the person of the date by which he shall comply in order to retain or obtain his driving privilege.

Section 3. When the Medical Review Board, pursuant to Section

2(3) of this regulation, recommends total suspension of a person's driving privilege or any limitations thereon, the Commissioner of the Department of Vehicle Regulation or his representative shall notify the person at the last known address of said person that this action will be taken unless a written request for a hearing before the board is received within twenty (20) days following delivery of the notice. The hearing shall be scheduled as early as practicable at a time and place designated by the commissioner or his representative and notice of same shall be mailed to the person involved no later than ten (10) days prior to the hearing date. The commissioner or his representative shall preside at the hearing before the Medical Review Board and at least three (3) physician members shall be present. The presiding officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The scope of the hearing shall be limited to the presentation of the evidence upon which the Medical Review Board made their recommendation and any medical evidence the petitioner wishes to present in explanation or refutation of this evidence. Evidence may be presented in the form of depositions. All testimony at the hearing shall be recorded and together with any depositions or exhibits introduced at the hearing shall form the complete record. Within ten (10) working days after the hearing, the commissioner shall issued a decision and this shall be promptly forwarded to the petitioner.

Section 4. The Commissioner of the Department of Vehicle Regulation or his representative shall promptly notify the person involved to submit to the physical examination set out in Section 2 of this regulation when one (1) or more of the following conditions exist:

(1) Driver has indicated that he "blacked out," lost consciousness or suffered a seizure prior to a reportable motor vehicle accident;

(2) Driver has been named in an affidavit by at least two (2) citizens as being incapable of properly operating a motor vehicle due to physical or mental infirmities;

(3) Driver has been reported by a physician as being incapable of driving safely due to physical or mental condition or due to medication prescribed for an extended time;

(4) Driver has been reported by a law enforcement officer after being observed driving or behaving in an erratic or dangerous manner which indicates a possibility of physical or mental infirmity;

(5) Applicant for operator's license or for renewal of same has obvious physical or mental impairment;

(6) Driver's official record kept by the Department of Vehicle Regulation indicates a possibility of physical or mental impairment;

(7) Driver has reported that he/she has suffered an epileptic seizure or any type of syncopal episode;

(8) Driver has been reported by a commonwealth attorney, county attorney, county clerk, circuit clerk, sheriff, or judge as being incapable of driving due to a physical or mental impairment.

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: April 7, 1994
FILED WITH LRC: April 15, 1994 at 4 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:023E

This regulation is being promulgated to establish criteria for the review and approval of oxygen and selected therapies in nursing facilities to be used by the Review Agency, effective May 1, 1994. The review agency will use the criteria to determine medical necessity for the use of oxygen and to determine whether respiratory, occupational, speech, and physical therapy, when ordered by a physician, meets program criteria to be billed as an ancillary service. This action is necessary to conserve scarce state resources; to provide for a more efficient administration of the nursing facility component of the Medicaid Program; and to comply with the recommendations of various legislative task forces and legislative language contained in House Bill 250 relating to Health Care Reform. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the regulations compiler on or about May 1, 1994.

BRERETON JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:023E. Review and approval of oxygen and selected therapies in nursing facilities.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.520, 44 CFR 430, 431, 432, 433, 435, 440, 442, 447, 455, 456, 42 USC 1396a, b, d
EFFECTIVE: April 29, 1994
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. 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 administration regulation sets forth provisions relating to review and approval of oxygen and selected therapies for Medicaid recipients in nursing facilities.

Section 1. Coverage of Oxygen. The Medicaid review agency shall determine medical necessity for the use of oxygen in nursing facilities in accordance with criteria shown in the Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual.

Section 2. Coverage of Selected Therapies as Ancillary Services. The Medicaid review agency shall determine whether respiratory, occupational, speech, and physical therapy, when ordered by a physician for a Medicaid patient in a Medicaid participating nursing facility, meets program criteria to be billed as an ancillary service using criteria shown in the Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual.

Section 3. Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual. The Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual, dated May 1, 1994, incorporated by reference in this administrative regulation, specifies the review and approval criteria for determinations of medical necessity for oxygen; the criteria for billing specified therapies as an ancillary service in a nursing facility; and the appeals process for the medical necessity decisions made by the review agency. The Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual 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 4. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after May 1, 1994.

MASTEN CHILDERS II, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: April 27, 1994
FILED WITH LRC: April 29, 1994 at 10 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:150E

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 and the alternative home and community based services for the mentally retarded used by all appropriate departments within the cabinet. 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 April 1, 1994.

BRERETON JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, d, n, 42 CFR 441 Subpart G
EFFECTIVE: April 28, 1994
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid 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 payment provisions relating to home and community based services provided to the mentally retarded as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Coverage. (1) The cabinet shall reimburse participating providers of alternative intermediate services for the mentally retarded (AIS-[~~/~~]MR) for services to Medicaid recipients who:

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

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

(2) In order to be covered, services shall be described and defined; and provided in accordance with the terms and conditions specified in 907 KAR 1:140, Alternative home and community based services for the mentally retarded.

Section 2. Payment Amounts. (1) Participating in-state AIS-[~~/~~]MR [~~case management, in-home training, homemaker and home health aide, personal care, residential care, day habilitation, habilitation, respite care and multiservice providers~~] certified in accordance with 907 KAR 1:140 shall be reimbursed a prospective rate per unit of service during the first year of participation based on a budgeted cost report in accordance with the Department for Medicaid Services' "Alternative Intermediate Service-[~~/~~]Mental Retardation (AIS-MR) Reimbursement Manual," dated December 15, 1993 [~~November 1, 1991~~] which is incorporated by reference in the administrative regulation. The Alternative Intermediate Service-[~~/~~]Mental Retardation Reimbursement Manual may be reviewed during working hours [~~(~~]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.

(2) Final prospective payment rate setting.

(a) Reimbursement for each subsequent year (but not later than December 31, 1993) shall be made using a prospective rate per unit of service based on a budgeted cost report in which the budgetary assumptions made were based on an actual annual cost report of the prior fiscal year ending June 30.

1. [~~(3)~~] The annual cost report shall be subject to audit.

2. Audit adjustments to the annual cost report shall be carried through to the budgeted cost report based on the budgetary assumptions used in preparation of the budgeted rate.

(b) Prospective rates per unit of service for periods after December 31, 1993 shall be based on the audited annual cost report for the previous fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Payment Exclusions and Limitations. (1) No payment shall include:

(a) The cost of room and board;

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

(2) No payment shall be made to:

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

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

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

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

~~[Section 5. Implementation. The amendments to this regulation shall apply to services provided on or after January 1, 1992.]~~

MASTEN CHILDERS II, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: April 6, 1994
FILED WITH LRC: April 28, 1994 at 1 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:625E

This emergency administrative regulation is being promulgated because the previous dental services payment regulation (907 KAR 1:027, Payments for dental services) expires April 15, 1994 because of a finding of deficiency. KRS Chapter 13A prohibits the administrative body from promulgating a regulation that is identical to or substantially the same as the regulation which expired. Therefore, we have revised reimbursement methodology to show that providers will be paid usual and customary actual billed charges up to the fixed upper limit per procedure established at 100 percent of the median billed charge using 1989 calendar year billed charges. Providers will be subject to the same upper limits in effect prior to November 1, 1994. This action must be taken on an emergency basis to continue program coverage. An ordinary administrative regulation will not be filed with the Regulations Compiler because it is the cabinet's intent that the rate setting methodology will be further revised in the very near future

BRERETON JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:625E. Dental services reimbursement.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441.30 and 447 Subpart B, 42 USC 1396a-d
EFFECTIVE: April 25, 1994
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 dental services.

Section 1. Definition. For purposes of determination of payment, the following definitions shall apply:

(1) "Usual and customary charge" refers to the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

(2) "Medically high risk" patient is defined as a patient in one (1) of the following classifications: heart disease, respiratory disease, chronic bleeder, uncontrollable patient (retardate, emotionally disturbed); or other (car accident, high temperature, massive infection, etc.).

Section 2. Reimbursement. The cabinet shall reimburse participating dentists for covered services rendered to eligible medical assistance recipients at the dentist's usual and customary actual billed charge up to the fixed upper limit per procedure established by the cabinet at 100 percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the administrative regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

Section 3. Hospital Inpatient Care. (1) Hospitalized inpatient care, which shall be paid in the same manner as shown in Section 2 of this administrative regulation, refers to those services provided inpatients. It does not include dental services provided in the outpatient extended care or home health units of hospitals. Any dentist submitting a claim for hospital inpatient care benefits must agree to accept payment in full for services rendered that patient during that admission.

(2) A general dentist may submit a claim for hospital inpatient services for the patient termed "medically a high risk".

Section 4. Reimbursement Exceptions. (1) The following procedures shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed upper limits as shown:

(a) Emergency call (intermediate level of service), thirty-one (31) dollars and twenty-five (25) cents;

(b) Comprehensive oral examination (limited to one (1) per provider per recipient per year), eighteen (18) dollars and seventy-five (75) cents;

(c) Panoramic film, twenty-six (26) dollars and fifty-six (56) cents;

(d) Pin retention therapy, eight (8) dollars;

(e) Scaling and root planing, sixty-one (61) dollars and seventy--five (75) cents;

(f) Relining lower denture, seventy-four (74) dollars and thirty-eight (38) cents;

(g) Adult obturator (temporary), $650;

(h) Adult obturator (permanent), $1,500; and

(i) Pediatric obturator, $300.

(2) The following procedures shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed upper limit as shown with preauthorization required for all procedures except for orthodontic consultation:

(a) Orthodontic consultation, $100, except that the fixed fee shall be fifty (50) dollars if the provider is referring the recipient to a specialist or the preauthorization for orthodontia services is not approved or a request for preauthorization of orthodontia services is not made;

(b) Preauthorized early phase orthodontic services for moderately severe or severe handicapping malocclusion, $1,200 for orthodontists

and $1,080 for general dentists;

(c) Preauthorized orthodontic services for moderately severe handicapping malocclusions, $1,600 for orthodontists and $1,440 for general dentists;

(d) Preauthorized orthodontic services for severe handicapping malocclusions, $2,400 for orthodontists and $2,160 for general dentists;

(e) Retention visit, thirty (30) dollars; and

(f) Stabilization visit, fifteen (15) dollars.

Section 5. Oral surgeons shall be treated in the same manner as physicians for reimbursement purposes, and shall be subject to the terms and conditions of payment shown in 907 KAR 1:010, Payments for physicians' services.

Section 6. Implementation Date. The changes shown in this administrative regulation shall be applicable with regard to services provided on or after April 16, 1994.

MASTEN CHILDERS, II, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: April 13, 1994
FILED WITH LRC: April 25, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 1994, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. 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

Agency Contact Person: Masten Childers II

(1) Type and number of entities affected: All providers of dental services participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost 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: Budget neutral*

(a) Direct and indirect costs and savings:

1. First year:

2. Continuing costs and 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: *Considered budget neutral because these rates consist of a reinstatement of rates which immediately preceded the rates set to expire on April 15, 1994, accordingly these rates will result in no increase in cost from that period.

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 Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set 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. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY
907 KAR 1:630E

This emergency administrative regulation, is being promulgated because the previous vision care services payment regulation (907 KAR 1:040, Payments for vision care services) expires April 15, 1994 because of a finding of deficiency. KRS Chapter 13A prohibits the administrative body from promulgating a regulation that is identical to or substantially the same as the regulation which expired. Therefore, we have revised the reimbursement methodology to show that providers will be paid usual and customary actual billed charges up to the fixed upper limit per procedure established at 100 percent of the median billed charge using 1989 calendar year billed charges. Providers will be subject to upper limits in effect prior to November 1, 1993. This action must be taken on an emergency basis to continue program coverage. An ordinary administrative regulation will not be filed with the Regulations Compiler because it is the cabinet's intent that the rate setting methodology will be further revised in the very near future.

BRERETON JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:630E. Vision care services reimbursement.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40,

440.60, 447 Subpart B, 42 USC 1396a-d

EFFECTIVE: April 25, 1994

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 vision care services.

Section 1. Definitions. For purposes of determination of payment the following definition shall be applicable: "Usual and customary charge" means the uniform amount the individual optometrist or ophthalmic dispenser charges in the majority of cases for a specific covered procedure or service.

Section 2. Reimbursement for Covered Procedures and Materials for Optometrists. (1) Reimbursement for covered services, except materials, shall be the optometrists' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at 100 percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this section of the administrative regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

(2) Reimbursement for materials (eyeglasses or parts of eyeglasses) shall be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the cabinet. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. (1) Reimbursement for covered services (a dispensing service fee or a repair service fee) rendered by licensed ophthalmic dispensers to eligible recipients shall be the ophthalmic dispensers' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at 100 percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the administrative regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

(2) Reimbursement for materials (eyeglasses or parts of eyeglasses) shall be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the cabinet. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

Section 4. Reimbursement for Other Supplies and Materials. Other supplies and materials such as cleaning fluid, cleaning cloth, carrying cases, etc., which are not eyeglasses or replacement/repair parts for eyeglasses, are considered to be provided in conjunction with and paid for as a part of the vision services rendered, and additional charges shall not be made to the cabinet or the recipient for these items.

Section 5. Effect of Third Party Liability. If payment for a covered service is due and payable from a third party source, such as private insurance, or some other third party with a legal obligation to pay, the amount payable by the cabinet shall be reduced by the amount of the third party payment.

Section 6. Limitations. (1) Program reimbursement for eyeglasses shall be inclusive. The cost of both laboratory materials and dispensing fees shall be billed to either the program or the recipient. If any portion of the amount is billed to or paid by the recipient, no responsibility for reimbursement shall attach to the cabinet and no bill for the service shall be paid by the cabinet. This limitation shall not, however, preclude the issuance of billings for the purpose of establishing the liability of, or collecting from, liable third parties.

(2) Telephone contacts shall be excluded from payment.

(3) Contact lenses shall be excluded from payment.

(4) Safety glasses shall be covered when medically necessary, subject to prior authorization.

Section 7. Optometrist laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

Section 8. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after April 16, 1994.

MASTEN CHILDERS, II, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: April 13, 1994

FILED WITH LRC: April 25, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 1994, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. 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

Agency Contact Person: Masten Childers II

(1) Type and number of entities affected: All providers of vision care services participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost 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: Budget neutral*

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: *Considered budget neutral because these rates consist of a reinstatement of rates which immediately preceded the rates set to expire on April 15, 1994, accordingly, these rates will result in no increase in cost from that period.

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 Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set 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. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

ADMINISTRATIVE REGULATIONS AMENDED BY THE PROMULGATING AGENCY AND THE REVIEWING SUBCOMMITTEE

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:170. In-kind contributions.

RELATES TO: KRS 121.015(6)(b), (c), (d), 121A.010(11)(a)(2), (3), (4)

STATUTORY AUTHORITY: KRS 121.120(1)(g), 121A.020(7)

NECESSITY AND FUNCTION: KRS 121.015(6)(b), (c), and (d) and 121A.010(11)(a)(2), (3), and (4) include the payment for or provision of certain goods and services to a candidate, slate of candidates, committee, or contributing organization within the definition of "contribution". Such payments are known as "in-kind" contributions. It is necessary to promulgate this administrative regulation to clearly identify the circumstances under which a contribution falls within the in-kind category.

Section 1. (1) **As used in this administrative regulation, "in-kind contribution" has the meaning provided in KRS 121.015(6)(b) and (c) and 121A.010(11)(a)(3) and (4).**

(2) A candidate, slate of candidates, committee, or contributing organization shall not conspire with an individual or other entity to disguise an illegal contribution as an in-kind contribution.

~~[(2) It shall be considered an in-kind contribution when an individual or other entity provides direct goods or services to a candidate, slate of candidates, committee, or contributing organization or if an individual purchases goods or services from a third party for the benefit of a candidate, slate of candidates, committee, or contributing organization.]~~

(3) A business enterprise may make an in-kind contribution to a candidate, slate of candidates, committee, or contributing organization provided, however, that the business enterprise is not incorporated. The owner of a corporation may make personal in-kind contributions provided that no corporate funds or assets are involved, or, if corporate property such as copiers, telephones, or other office equipment are utilized, the actual costs are billed to the owner and reimbursed with personal funds, and the cost does not exceed the applicable individual contribution limit contained in KRS 121.150. A candidate shall not accept the use of the assets of any corporation unless the fair market value is billed to the campaign and paid for with campaign funds.

(4) If goods or services are provided at less than the rate normally charged, the amount of the in-kind contribution shall be the difference between the usual and normal charge for the goods and services at the time of the contribution and the amount actually charged.

(5) ~~[The payment by any person of compensation for the personal services of another if those services are rendered without charge to a candidate, slate of candidates, committee, or contributing organization shall be an in-kind contribution.]~~ No compensation shall be considered paid to any employee under the following conditions:

(a) If an employee is paid on an hourly or salaried basis and is expected to work a particular number of hours per period, no contribution results if the employee engages in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time;

(b) No contribution results where an employee engages in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee's time is considered his own to use as he sees fit; or

(c) No contribution results where the time used by the employee to engage in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization is bona fide, although compensable, vacation or other earned leave time.

Section 2. A contribution made under the following circumstances shall not be considered an in-kind contribution:

(1) Payment for goods and services previously or simultaneously acquired by a candidate, slate of candidates, committee, or contributing organization; or

(2) Payment of a debt with cash received by a candidate, slate of candidates, committee, or contributing organization without depositing the funds into the campaign account and complying with all applicable reporting requirements.

~~[Section 3. (1) A candidate, slate of candidates, committee, or contributing organization shall not attempt to circumvent the contribution limitations of KRS 121.150 or the contribution and expenditure limits of KRS Chapter 121A by conspiring with an individual, business enterprise, or other entity to engage in activity which would otherwise constitute an independent expenditure for the benefit of the candidate, slate of candidates, committee, or contributing organization.~~

~~(2) Candidates, slates of candidates, committees, or contributing organizations shall have no duty to report expenditures made on their behalf which qualify as independent expenditures. They shall report receipt of in-kind contributions resulting from expenditures made on their behalf and with their direct or indirect cooperation, consent, request, suggestion, or consultation.]~~

JOSEPH H. TERRY, Chair

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at 11 a.m.

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:190. Committee affiliation.

RELATES TO: KRS 121.150(7)

STATUTORY AUTHORITY: KRS 121.120(1)(g), 121.150(7)

NECESSITY AND FUNCTION: KRS 121.150(7) provides that permanent committees affiliated by bylaws, structure, or registration, as determined by the registry, shall be considered one (1) committee for purposes of the contribution limitations contained in KRS 121.150. It is necessary to promulgate this administrative regulation to establish guidelines to be followed by the registry in making the affiliation determination.

Section 1. (1) For purposes of applying the contribution limits contained in KRS 121.150, permanent committees shall be considered affiliated committees if they are established, financed, maintained, or controlled by or in common control with:

(a) A single corporation or its subsidiaries;

(b) A single national or international union or its state and local unions or subordinate organizations; and

(c) A membership organization, other than a political party committee, including a trade or professional association or group.

(2) The registry may examine the relationship between organizations that sponsor committees, between the committees themselves, or between one (1) sponsoring organization and a committee established by another organization to determine whether the committees are affiliated. In determining whether committees not otherwise covered by this administrative regulation are affiliated for purposes of contribution limitations, the registry may consider the circumstantial factors described in this subsection in the context of the overall relationship between the entities. Such factors include, but shall not be limited to:

(a) Whether a sponsoring organization of one (1) committee owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee;

(b) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(c) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote, or otherwise control the officers or other decisionmaking employees or members of another sponsoring organization or committee;

(d) Whether a sponsoring organization or committee has a common or overlapping membership or common contributors with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(e) Whether a sponsoring organization or committee has any members, officers, or employees who were members, officers, or employees of another sponsoring organization or committee which indicates the creation of an alter ego of the original committee; and

(f) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs.

Section 2. No person, organization, or committee shall establish an entity which would qualify as a contributing organization as defined in KRS **121.015(4)** **[~~121.035~~]** for the purpose of circumventing the contribution limitations contained in KRS 121.150 and the affiliation guidelines established by this administrative regulation.

JOSEPH H. TERRY, Chair
APPROVED BY AGENCY: November 12, 1993
FILED WITH LRC: November 15, 1993 at 11 a.m.

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:200. Allowable campaign expenditures.

RELATES TO: KRS 121.150
STATUTORY AUTHORITY: KRS 121.120(1)(g), 121.175
NECESSITY AND FUNCTION: KRS 121.175, as amended by the General Assembly in extraordinary session in 1993, requires the Registry of Election Finance to promulgate administrative regulations to specifically define those expenditures that may lawfully be made from a candidate's campaign account. It is therefore necessary to promulgate this administrative regulation so that the agency may fulfill its statutory mandate.

Section 1. Allowable Expenditures. In addition to the general categories of allowable campaign expenditures provided by law, the following expenditures shall be considered allowable:

(1) Expenditures made or items donated to charitable and civic organizations such as clubs, neighborhood organizations, schools, and churches, provided that the expenditure furthers a candidacy through advertising;

(2) Expenditures for items of personal property bearing the name or likeness of the candidate in a conspicuous manner for distribution by a candidate **[~~which have a value of ten (10) dollars or less, and~~]** which are distributed for the purpose of advertising that individual's candidacy. These items include, but are not limited to, hats, shirts, calendars, magnets, holiday greeting cards, and similar items. The purchase of tickets for general distribution for the purpose of influencing and election, either directly or indirectly, shall not be allowed under the subsection;

(3) Reasonable expenditures for services such as distribution of campaign literature, staff services, and similar services which are primarily and directly related to the individual's candidacy;

(4) Expenditures for the purchase of transportation services, including but not limited to the transportation of voters to the polls, provided that the expenditures are reasonable in light of the number of persons transported, mileage driven, and time spent. All transportation expenditures shall be primarily and directly related to the candidacy of the individual on whose behalf the expenditures are made;

(5) Expenditures for tickets to political and other events to be attended by the candidate, his spouse, or a campaign staff representative, and from which the candidate derives a direct benefit to his candidacy. The burden shall be on the candidate to prove to the registry that representation at the event provided a direct benefit to his candidacy;

(6) The purchase of American, state, or other flags which are donated to schools, civic, or charitable organizations;

(7) **[~~Campaign events such as bean suppers, breakfasts, luncheons, or similar events, regardless of whether admission is charged, provided that the value of the meal does not exceed five (5) dollars per person; and~~**

~~(8)~~] The purchase or rental of items such as cellular telephones, copiers, computers, automobiles, facsimile machines, and similar items. **[~~Such purchase or rental shall be presumed to be primarily and directly related to the individual's candidacy if the purchase or rental occurs during the year in which the individual will appear on the ballot or seeks election as a write-in candidate. The purchase of such items in a year in which the individual is not a candidate shall be allowed only if the item is purchased solely for use in an upcoming campaign. The continued rental of such items during a year in which an individual is not a candidate shall be allowed, provided that the prorated use thereof which is primarily campaign related exceeds fifty (50) percent of the total use.~~]** Only that use attributable to the campaign may be paid for with campaign funds and the burden shall be on the candidate to prove that an expenditure is allowable under this subsection.

Section 2. Unlawful Campaign Expenditures. In addition to the expenditures specifically prohibited by law, the following categories of campaign expenditures shall not be considered allowable expenditures from a campaign account:

(1) Payment of dues to professional, civic, or other organizations to which the individual belongs or desires to join;

(2) Expenditures made to defray the costs associated with an individual's performance of his official duties as an officeholder**[~~; and~~**

~~(3) Costs associated with gifts, flowers, food, or similar items which are purchased for the benefit of campaign staff or volunteers, or any other expenditure which bestows a private, pecuniary benefit to an individual~~].

Section 3. **[~~Expenditures made by a candidate or an incumbent officeholder during a year in which he will not appear on the ballot as a candidate shall be subject to strict scrutiny.~~]** If the registry staff, in the course of reviewing a candidate's or incumbent's campaign

finance statements, determines that a questionable expenditure has been made, whether or not the expenditure was made during an election year, the burden shall be on the candidate or incumbent to prove that the expenditure was directly and primarily related to his candidacy.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: December 9, 1993
FILED WITH LRC: December 15, 1993 at 10 a.m.

REVENUE CABINET
Department of Administrative Services
(As Amended)

103 KAR 16:145. Apportionment and allocation; barge line companies.

RELATES TO: KRS 141.120
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation, under authority of KRS 141.120(10)(b), specifies how the factors for apportioning the income of interstate barge lines are to be determined.

Section 1. General. (1) For taxable years beginning before August 1, 1985, business income of a multistate corporate barge line shall be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the sales factor plus the property factor plus the payroll factor, and the denominator of which is three (3). For taxable years beginning after July 31, 1985, business income of a multistate corporate barge line shall be apportioned to Kentucky by multiplying the income by a weighted fraction, the numerator of which is the weighted sales factor (fifty (50) percent) plus the weighted property factor (twenty-five (25) percent) plus the weighted payroll factor (twenty-five (25) percent), and the denominator of which is four (4).

(2) Nonbusiness income shall be allocated to Kentucky pursuant to KRS 141.120(3) [~~(4)~~] through (7) and 103 KAR 16:060.

Section 2. Sales Factor. Sales means all gross receipts of the taxpayer not allocated as nonbusiness income. The sales factor is a fraction, the numerator of which is operating income assigned to Kentucky plus receipts assigned to Kentucky under KRS 141.120 [~~010~~](8)(c) [~~103 KAR 16:070~~] and the denominator of which is total operating income plus total receipts assigned under 141.120 [~~010~~](8)(c) [~~103 KAR 16:070~~]. Operating income is assigned to Kentucky as follows: total operating income shall be multiplied by a fraction, the numerator of which is the miles operated in Kentucky and the denominator of which is total miles operated. Miles operated in Kentucky shall be (fifty (50) percent) of the miles operated on the Ohio River, the Big Sandy River and Mississippi River adjacent to Kentucky shoreline plus all miles operated on other inland waterways within Kentucky. "Mile operated" means each barge, tug or other watercraft moved one (1) mile.

Section 3. Property Factor. The property factor is a fraction, the numerator of which is the average value of real or tangible property situsedin Kentucky that is owned and used and/or leased and used. The denominator is the average value of all real or tangible sitused property that is owned and used and/or leased and used everywhere. The average value of tangible sitused property shall be determined under the provisions of KRS 141.120 [~~010~~](8)(a) [~~103 KAR 16:080~~]. The value of watercraft and other floating property shall be excluded from the property factor.

Section 4. Payroll Factor. The payroll factor shall be determined under the provisions of KRS 141.120(8)(b) [~~and 103 KAR 16:090~~].

KIM BURSE, Secretary
APPROVED BY AGENCY: March 14, 1994
FILED WITH LRC: March 15, 1994 at 11 a.m.

TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.360, 150.365, 150.370, 150.390, 150.400, 150.410, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175
NECESSITY AND FUNCTION: To insure the permanent and continued supply of small game and furbearer species by protecting them from overharvest.

Section 1. Definitions. (1) "Conibear-type trap" means a spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap not set to drown an animal upon capture.

(3) "Foot-hold trap" means a spring-loaded trap with smooth, metallic jaws which close upon an animal's foot.

(4) "Furbearers" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, weasels or striped skunk.

(5) "Hunter" means a person hunting small game or furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

(6) "Modern gun deer season" means the ten (10) day period beginning on the second Saturday of November.

(7) "Nonlocking snare" means a wire, cable or string loop without a device to keep the loop from loosening.

(8) "Padded trap" means a commercially constructed foot-hold trap with metal jaws padded with a soft, nonmetallic substance.

(9) "Small game" means squirrels, rabbits, quail or grouse.

(10) "Squirrels" means gray squirrels and fox squirrels in any combination.

(11) "Water set" means a trap set to drown an animal upon capture.

Section 2. Hunting and Trapping Seasons. (1) Squirrels: the third Saturday in August through December 31. The season is closed during the modern gun deer season.

(2) Rabbits and quail: November 1 through January 31. The season is closed during the modern gun deer season.

(3) Grouse: the day after the modern gun deer season through the last day in February in Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe.

(4) Furbearers: **at sunset** the day after the modern gun deer season through 12 noon, February 1.

(5) Extended beaver season: the month of February.

(6) Small game and furbearers taken by falconry: September 1 through February 15.

(7) There is no closed season on chasing red and gray foxes and rabbits during daylight hours for sport and not to kill.

(8) Bobcats shall be taken only according to the provisions of 301 KAR 2:240.

Section 3. Small Game Bag and Possession Limits.

	Daily	Possession
Squirrels	6	12
Rabbits	4	8
Quail	8	16
Grouse	4	8

Section 4. Furbearer Hunter Limits. (1) There is no limit on furbearers except raccoons.

(2) A hunter shall not take more than one (1) raccoon within a twenty-four (24) hour period from noon to noon.

Section 5. Limits by Falconry. Falconers hunting within the falconry season but outside the dates specified in Section 2(1) through (5) of this administrative regulation: no more than two (2) of any small game or furbearer species, singly or in the aggregate per day.

Section 6. Shooting Hours. (1) Small game or furbearers, except opossum and raccoon: daylight hours only.

(2) Raccoon and opossum: day or night.

Section 7. Use of Calls. Hunters may use hand- or mouth-operated calls or attracting devices.

Section 8. Hunters shall not possess buckshot or shotgun slugs.

Section 9. Hunters shall not use lights from a boat to take raccoon or opossum.

Section 10. Trapping. (1) There are no daily or possession limits on furbearers taken by trapping.

(2) Traps used for dry-land sets shall be:

(a) Deadfalls;

(b) Wire cage or box traps;

(c) Number two (2) or smaller foot-hold traps;

(d) Padded traps with a jaw spread of six (6) inches or less;

(e) Number 220 or smaller Conibear-type traps; or

(f) Nonlocking snares.

(3) Any trap may be used as a water set except during the extended beaver season.

(4) Traps shall be set at least ten (10) feet apart.

(5) Traps shall not be set in trails or paths commonly used by humans or domestic animals.

(6) Trappers may use lights from boats or vehicles.

Section 11. During the extended beaver season:

(1) Trappers shall not use dry land sets;

(2) Trappers shall use:

(a) Number three (3) or larger foot-hold traps;

(b) Padded traps having a jaw spread of at least five and one-half (5-1/2) inches;

(c) Conibear-type traps with a jaw spread of at least eight (8) inches; or

(d) Nonlocking snares.

Section 12. 301 KAR 2:250 is hereby repealed.

C. TOM BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: March 10, 1994
FILED WITH LRC: March 10, 1994 at 1 p.m.

TRANSPORTATION CABINET
Office of Minority Affairs
(As Amended)

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.

RELATES TO: KRS Chapters 96A, 174, 176, 177, 183, 13 CFR 121.1-121.3, 49 CFR 23, 15 USC 637

STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 CFR 23

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program. It also sets forth the requirement that certified and prequalified DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.

Section 1. Definitions. (1) "Applicant" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification as a disadvantaged, minority or women business enterprise.

(2) "Approval" means that the applicant meets disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(3) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged, minority or women business enterprise or joint venture criteria.

(4) "Challenge" means an action of a third party which takes issue with the socially and economically disadvantaged status of certified disadvantaged business enterprise program participants or applicants for DBE certification.

(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet which certification has not expired, as a disadvantaged, minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged, minority or women business enterprise or joint venture.

(6) "Denial" means that the applicant does not meet disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(7) "Disadvantaged business enterprise" or "DBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations:

(a) Which is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged persons; or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

(8) "Joint venture" means an association of two (2) or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge.

(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)).

(10) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and

(b) Whose management and daily business operations are controlled by one (1) or more such individuals.

(11) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(12) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities.

(13) "Prequalified" means that the Transportation Cabinet has approved the business enterprise to perform certain functions on behalf of the cabinet in accordance with KRS Chapter 45A or 603 KAR 2:015.

(14) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Transportation Cabinet shall have a rebuttable presumption that individuals listed in paragraphs (a) through (f) of this subsection are socially and economically disadvantaged. The Transportation Cabinet also may determine, on a case-by-case basis, that individuals who are not a member of one (1) of the following groups are socially and economically disadvantaged:

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(f) "Women."

(15) "Women business enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. 49 CFR 23 effective June 1, 1992 is adopted without change. This federal regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements which the Transportation Cabinet shall impose on firms desiring certification.

Section 3. Application Process. (1) Application for certification as a DBE, MBE, or WBE shall be made to the Transportation Cabinet's Office of Minority Affairs on form TC 10-3. Each application form shall be completed in full. All documentation required by the application shall be attached to the completed application. The person signing the application shall identify his position with the business enterprise applying for certification. The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Office of Minority Affairs.

(3) The Office of Minority Affairs shall perform an on-site inspection of the offices and any job sites in Kentucky on which the firm is working at the time of the application evaluation of any new applicant. Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Office of Minority Affairs to deny the application.

(4) An out-of-state applicant as a prerequisite to consideration of certification by the Office of Minority Affairs shall be certified as a DBE, MBE, or WBE by the state transportation agency responsible for certifying firms under 49 CFR Part 23 in the state in which the firm has residence.

(5) The Office of Minority Affairs may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Office of Minority Affairs to deny the application.

(6) The form TC 10-3, Application for Certification Schedule A, last revised in January, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained, viewed or copied at the Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. Its telephone number is (502)564-3601.

Section 4. Evaluation of Application. (1)(a) The Transportation Cabinet, Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53 to determine the eligibility of a firm to be certified or recertified as a MBE.

(b) The Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53; 49 CFR Part 23.62; 49 CFR Part 23, Subpart D, Appendix A, Appendix B and Appendix C to determine the eligibility of a firm to be certified or recertified as a DBE or WBE.

(c) To be certified a firm shall:

1. Perform a commercially useful function as set forth in 49 CFR Part 23.47;

2. Be operated with the intention of making a profit; and

3. Be operational and performing as an independent business concern prior to the date the application for certification was filed.

(2) The Office of Minority Affairs shall issue a written determination of eligibility for certification within ninety (90) days of receipt of a completed application provided that a challenge as set forth in Section 9 of this administrative regulation has not been received.

Section 5. Certification of Applicant Firm. (1) If an application for certification as a DBE, MBE, or WBE is approved by the Transporta-

tion Cabinet, Office of Minority Affairs and a challenge to the status of a firm from a third party as set forth in Section 9 of this administrative regulation is not received during the time the Office of Minority Affairs is evaluating the application, the written notification required by Section 4(2) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE, MBE, or WBE.

(2) Certification as a DBE, MBE, or WBE is valid for one (1) year from the date of notice of certification.

(3) Records of a certified firm shall be retained for a period of not less than five (5) years from the date of notice of certification.

(4) Certification of a business enterprise shall expire immediately upon any change in ownership or control of the business enterprise. The business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control. If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 6. Recertification. (1) At least thirty (30) days prior to its certification expiration, a certified DBE, MBE, or WBE that intends to continue its certification shall submit an application to the Transportation Cabinet, Office of Minority Affairs. The application shall be in the same form and require the same information as in Section 3 of this administrative regulation except that beginning with the application for recertification for the third year of certification, certified firms prequalified to engage in highway construction, design or right-of-way activities, shall also submit evidence of participation in at least one (1) management development course as set forth in Section 14 of this administrative regulation.

(2) Certification of a DBE, MBE, or WBE which has requested recertification at least thirty (30) days prior to the date of certification expiration shall not expire unless the Office of Minority Affairs denies the request for recertification as set forth in Section 6 of this administrative regulation.

(3) If a firm is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, its request for recertification shall be denied.

(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(5) If the Office of Minority Affairs' decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective immediately. However, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

Section 7. Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, Office of Minority Affairs, the notification required by Section 4(2) of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 of this administrative regulation.

(3) An applicant firm may not reapply for certification for one (1) year from the effective date of denial. The effective date of denial shall be the date ~~[of]~~ the notice is received or delivery is attempted if the denial is not appealed. If the denial is appealed and the denial is upheld the effective date of the denial shall be the date of the notice of final action on behalf of the Transportation Cabinet.

Section 8. Decertification. (1) The Transportation Cabinet, Office of Minority Affairs may perform periodic reviews of each certified DBE, MBE, or WBE during its certification period to verify continued eligibility of the firm. If the Office of Minority Affairs finds noncompliance with the eligibility criteria or the certified firm fails to provide reasonable information requested by the Office of Minority Affairs as a part of the periodic review, the office may initiate a decertification proceeding.

(2) The Office of Minority Affairs shall notify the certified firm of the pending decertification. The notice shall specify the reasons for the pending decertification. The firm may request a predetermination meeting within ten (10) days of the date the notice is received or delivery is attempted. If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(4) If the Office of Minority Affairs' decision after the predetermination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

(5) The effective date of the decertification is thirty (30) days after the date the notice of decertification is mailed to the firm providing the firm does not appeal the decertification to the Transportation Cabinet. If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation. Decertification shall be for a specific period of time but not less than one (1) year.

Section 9. Challenge of DBE Certification. (1) Any third party may challenge the socially and economically disadvantaged status of any individual, except an individual who has a current certification from the Small Business Administration issued pursuant to United States Code Title 15 Section 637, rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE. The challenge shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The Office of Minority Affairs shall determine, on the basis of the information provided by the challenging party, if there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

(4) If the Office of Minority Affairs determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the office shall so inform the challenging party in writing. This shall terminate[s] the proceeding.

(5) If the Office of Minority Affairs determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the office shall notify the challenged party that his status as a socially and economically and disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the Office of Minority Affairs, within a specified reasonable time, information sufficient to evaluate his status as a socially and economically disadvantaged individual. Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the challenge proceedings shall be completed prior to completion of the certification.

(7) The Office of Minority Affairs shall evaluate the information available and make a proposed determination of the social and economic disadvantage of the challenged party. The office shall notify both parties of this proposed determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within

ten (10) days of the date of the notice. If neither party requests a predetermination meeting within the ten (10) days, the proposed determination of the Office of Minority Affairs shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 10 of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section and Section 10 of this administrative regulation as it relates to challenge, the Office of Minority Affairs shall use the standards set forth in 49 CFR Part 23, Subpart D, Appendix C.

(11) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) The decision of the Office of Minority Affairs in subsection (4) of this section or after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 CFR Part 23.55.

Section 10. Predetermination Meeting. (1) A predetermination meeting with the Office of Minority Affairs may be requested by any party as set forth in Sections 8 and 9 of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the predetermination meeting between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority Affairs and all affected parties the meeting may be scheduled later than the ten (10) days.

(3) The Office of Minority Affairs shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting shall provide the opportunity for the affected parties to present evidence or arguments, either written or oral, on the matter being considered by the Office of Minority Affairs. The affected parties may be represented by legal counsel.

(5) The Office of Minority Affairs shall render a written decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Office of Minority Affairs shall use the standards set forth in Section 4 of this administrative regulation. The affected parties shall be notified of the decision of the Office of Minority Affairs.

Section 11. Appeal and Hearing. (1) Any party in Sections 6(2), 8(4) and 9(10) of this regulation adversely affected by a decision of the Transportation Cabinet, Office of Minority Affairs may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet.

(2)(a) The Transportation Cabinet shall schedule the hearing on the appeal between fifteen (15) and thirty (30) days after the appeal is received unless otherwise agreed to by all parties.

(b) If an appeal hearing is rescheduled beyond the thirty (30) days from the date of the notification to deny certification at the request of the applicant firm, the Office of Minority Affairs shall not approve as part of an established DBE goal any of the work contracted by the applicant.

(c) A firm for which decertification proceedings has been started shall not be approved by the Office of Minority Affairs to meet established DBE goals.

(3) The Transportation Cabinet shall provide written notice to the appellant of the date, time and location of the hearing.

(4) At the hearing, the hearing officer appointed by the Transportation Cabinet, shall provide an opportunity for the appellant to call witnesses and present evidence and arguments both written and oral as to why the decision of the Office of Minority Affairs should be overturned.

(5) The Office of Minority Affairs shall present evidence at the hearing on the reasons their decision was made. However, the burden of proof is on the appellant.

(6) The hearing officer appointed by the Transportation Cabinet has the authority to issue subpoenas to compel the appearance of witness or the production of other evidence.

(7) The Transportation Cabinet shall provide a stenographer to record all oral testimony at the hearing.

(8)(a) The hearing officer shall prepare a written report setting forth findings of fact, conclusions of law and a recommendation of final action within sixty (60) days of the hearing.

(b) The hearing officer's findings of fact shall be based on conditions existing at the time the on-site inspection and owner interview were conducted by the Office of Minority Affairs. Changes made in an applicant's firm since the on-site inspection or owner interview shall not be considered by the Office of Minority Affairs or a hearing examiner in determining the eligibility of the firm.

(c) The report shall be submitted to the Secretary of the Transportation Cabinet or his appointed designee.

(9) The Secretary shall render the final decision of the Transportation Cabinet within ten (10) days of receipt of the hearing officer's report. A copy of the decision shall be sent by certified mail to the appellant and the Office of Minority Affairs.

(10) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 CFR 23.55 and 49 CFR 23 Subpart D, Appendix A, Decertification Procedures.

Section 12. Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE, or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE, or WBE program. Application for certification shall be on Transportation Cabinet Form TC 10-5 which is incorporated by reference as a part of this administrative regulation. The application procedure, eligibility standards, and certification procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet.

(3) If all firms involved in the joint venture are certified DBEs, MBEs, or WBEs, there shall not be a need for the joint venture to request certification.

(4) The form TC 10-5, DBE/WBE Joint Venture Eligibility Application, Schedule B, last revised in February, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained, viewed or copied at the Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. Its telephone number is (502) 564-3601.

Section 13. Additional Program Guidelines. 13 CFR 121.1-121.3, effective **April 22, 1994** [~~September 9, 1992~~], is adopted without change. The federal regulation sets forth the small business size standards established by the Small Business Administration. These size standards, when less than $15.37 million, are required by 49 CFR Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from the certification program, i.e., it is no longer considered to be a small business.

Section 14. Management Development Course. (1) Each owner of a Kentucky-based certified firm which is also prequalified by the Transportation Cabinet under the provisions of 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall

attend at least one (1), one (1) week management development course prior to being recertified for its third year as a DBE.

(2) DBE certified firms not based in Kentucky but which are within a seventy-five (75) mile proximity may be required by the Office of Minority Affairs to attend at least one (1) management development course. This attendance requirement shall be based on an assessment of the firm's managerial and operational capability in relationship to the regulatory requirements determined during the conduct of the on-site inspection, personnel interviews, and evaluation of the firm's prequalification status.

(3) DBE certified firms which have previously attended a management development course and which have been cited for a violation of this administrative regulation or 600 KAR 4:020 may be required to attend an additional management development course.

(4) The management development course shall be offered free of charge by the Entrepreneurial Development Institute.

(5) All owners of firms required to attend a management development course shall attend the course.

(6) The owners of certified firms which are not required to attend the management development course may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

Section 15. Disadvantaged Business Enterprise Orientation Program. (1) The Transportation Cabinet shall offer a one (1) day orientation program for any certified DBE firm. The orientation program shall acquaint owners of DBE firms with the following:

(a) The organization, structure and expectations of the Transportation Cabinet;

(b) The requirements of the DBE program and with the provisions of the "Standard Specifications for Road and Bridge Construction" and "Standard Drawings"; and

(c) The supportive services and technical assistance available to the DBE.

(2) Each owner of a certified DBE firm which is also prequalified under 600 KAR 1:100 or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend an orientation program prior to competing for a U.S. Department of Transportation assisted project.

(3) If the certified DBE firm is based out of Kentucky, the orientation program may be completed by telephone and mail.

(4) The owners of certified firms which are not required to attend the orientation program may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

MAURICE SWEENEY, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: March 14, 1994
FILED WITH LRC: March 15, 1994 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(As Amended)

903 KAR 5:300. Required reports and due dates.

RELATES TO: KRS 341.190, 341.262
STATUTORY AUTHORITY: KRS ~~[13A.100,]~~ 194.050, 341.115, **Internal Revenue Procedures 93-18 and 93-31**
NECESSITY AND FUNCTION: KRS 341.190 authorizes the Secretary for Human Resources to require the furnishing of certain information and records by employing units concerning wages paid, employment and other related matters. KRS 341.262 provides that a penalty will be assessed for failure to submit reports when due. Internal Revenue Procedures 93-18 and 93-31 require employers of more than 250 workers to report wage data for federal purposes using magnetic media, or incur penalties prescribed in Internal Revenue Code Section 6721. This administrative regulation delineates the required reports and information with attendant due dates, and adopts the federal magnetic media reporting requirements for reporting of wage information for state unemployment insurance purposes.

Section 1. Required Reports. (1) For the purpose of this administrative regulation, following are the required reports, which are incorporated by reference:

[~~(1)~~] Employer's Quarterly Unemployment Wage and Tax Report (UI-3), [~~;~~] and

[~~(2)~~] Reimbursing Employer's Quarterly Wage and Tax Report (UI-3R).

(2) For employers with more than five (5) workers performing service in covered employment during the quarter being reported, a report shall not be considered filed unless it includes the name, Social Security number and wages of each worker.

(3) For employers with more than 250 workers performing service in covered employment during the quarter being reported, a report shall not be considered filed unless the name, Social Security number, and wages of each worker are reported using magnetic media in a format approved by the department for this purpose. The secretary or his authorized representative shall waive this requirement upon a showing of a lack of automation, severe economic hardship, or other good cause. Good cause shall include proof that the employer has been exempted from reporting wage information using magnetic media under any like provision of federal law. Request for waiver from this requirement shall be made in writing specifying the reason for the request.

Section 2. Due Dates. (1) Except as provided **in subsection (2) of this section** [**below**], the due date for the filing of a required report **shall be** [**is**] the last day of the month following the close of the calendar quarter in which wages are paid in covered employment.

(2) The initial due date for the filing of a required report by an employing unit newly subject under the provisions of KRS 341.070 shall be the last day of the month following the quarter in which the employing unit is first given notice by the department of its liability as a subject employer, provided that:

(a) For the purpose of this administrative regulation, no employing unit shall be deemed to be newly subject if:

1. Prior to beginning employment in Kentucky, it has previously been determined subject under the unemployment compensation law of any other state; however, it shall be deemed to be newly subject if all wages paid in covered employment in Kentucky were reported to another state unemployment compensation program by the due date specified by that state; or

2. If it has previously been determined subject under the provisions of KRS 341.070 but subsequently terminated subjectivity under the provisions of KRS 341.250(2); and

(b) This subsection shall not apply if the employing unit has failed to file a required report due to willful intent to evade filing. In this case the provisions of subsection (1) of this section shall apply.

Section 3. Reports [~~which are deposited in the mail~~] shall be considered [~~filed as of the date~~] received by the department as defined in 903 KAR 5:310.

MARGARET WHITTET, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: January 6, 1994
FILED WITH LRC: February 18, 1994 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(As Amended)

904 KAR 2:370. Technical requirements; job opportunities and basic skills.

RELATES TO: 45 CFR 250.0, 250.10, 250.11, 250.30, 250.32, 250.33, 250.34, 250.35, 250.36, 250.41, 250.43, 250.44, 250.45, 250.46, 250.48, 250.60, 250.61, 250.63

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC). KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of the Job Opportunities and Basic Skills (JOBS) Program participants as they relate to eligibility for receiving AFDC.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.

(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.

(3) "Case manager" means the Department for Social Insurance (DSI) individual who:

(a) Determines ongoing AFDC or Medical Assistance (MA) or Food Stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;

(b) Aids the JOBS participant by brokering services for the participant;

(c) Identifies and resolves barriers to the extent possible; and

(d) Delivers JOBS related services to the participant.

(4) "Conciliation" is a process in which participation problems in the JOBS Program can be resolved.

(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.

(6) "Target population" means that group composed of each individual who:

(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the preceding sixty (60) months;

(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;

(c) Is a custodial parent under the age of twenty-four (24) who:

1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or

2. Had little or no work experience in the preceding year; or

(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.

Section 2. Exemptions. All AFDC recipients are required to participate in the JOBS Program if the program is available in the county of residence unless the recipient:

(1) Is a child who:

(a) Is under age sixteen (16); or

(b) Attends, full time, an elementary, secondary, vocational or technical school (unless he was enrolled in school through the JOBS Program);

(2) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;

(3) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS Program. This may include a period of recuperation after childbirth if prescribed by a woman's physician;

(4) Is sixty (60) years old or older;

(5) Resides in a county which offers the JOBS Program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(6) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(7) Is working at least thirty (30) hours per week prior to determination of JOBS status;

(8) Is pregnant and the child is expected to be born within the following six (6) month period;

(9) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in Section 5(3) of this administrative regulation;

(10) Is a full-time Volunteers in Service to America (VISTA) volunteer.

(11) Is the parent age twenty (20) years or older or other relative personally providing care for a child under six (6) years of age unless:

(a) The agency assures that child care will be guaranteed; and

(b) The state agency guarantees that required program participation will not exceed twenty (20) hours per week.

Section 3. Volunteers. All persons in active JOBS counties as specified in Section 2 of this administrative regulation may volunteer to participate in the JOBS Program.

(1) The DSI shall give first priority for JOBS services to volunteers within the target population to be served, as described in Section 1 of this administrative regulation.

(2) A volunteer who is exempt, as specified in Section 2 of this administrative regulation, and who stops participating without good cause shall lose priority status for JOBS services if he volunteers at a later time.

(3) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in Section 10 of this administrative regulation.

Section 4. Components. With the exception of the component described in subsection (8) of this section, all JOBS counties shall offer the following services and activities:

(1) Education below the postsecondary level shall include:

(a) High school education or education designed to prepare a person to qualify for a high school equivalency certificate;

(b) Basic and remedial education that shall provide an individual with a basic literacy level, equivalent to at least grade 8.9; and

(c) Education in English proficiency to allow employment commensurate with his employment goal for an individual who is not sufficiently competent to:

1. Understand;
2. Speak;
3. Read; or
4. Write the English language.

(2) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(3) Job readiness activities that help prepare a participant for work by familiarizing him with workplace expectations, attitudes and appropriate behavior.

(4) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for a participant.

(5) Job search which provides group and individual assistance and training with job-seeking activities.

(a) Job search shall be provided in a group setting where a

participant is taught job-seeking skills, and may include a phone bank from which he contacts potential employers;

(b) Individual job search shall be offered as needed to provide on a one-to-one basis:

1. Counseling;
2. Information;
3. Dissemination; and
4. Support;

(c) Participation in the job search component shall not exceed eight (8) weeks in any period of twelve (12) consecutive months unless it is required as part of another educational, training, or employment component designed to improve the individual's employment prospects.

(6) On-the-job training (OJT) in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job.

(a) A participant in OJT shall be compensated by the employer at the same rate as a similarly situated employee or trainee;

(b) The wage ~~[cabinet]~~ shall be subsidized ~~[subsidize the wage]~~ through payments to the employer for OJT, not to exceed an average of fifty (50) percent of the wages paid to the participant during the training;

(c) At the conclusion of the OJT, the participant shall be retained as a regular employee.

(7) Community Work Experience Program (CWEP) which provides unpaid work experience and training in nonprofit organizations to assist a participant to move promptly into regular public or private employment.

(a) A CWEP assignment shall be limited to projects which serve a useful public purpose in a field such as:

1. Health;
2. Social service;
3. Environmental protection;
4. Education;
5. Urban and rural development;
6. Welfare;
7. Recreation;
8. Public facilities;
9. Public safety; and
10. Day care;

(b) The maximum number of hours of participation shall be determined by dividing the family's monthly AFDC grant amount by the greater of the federal or state minimum wage;

(c) The agency shall reassess and revise, if necessary, the individual's employability plan:

1. After each six (6) months of CWEP participation; and
2. At the conclusion of participation in the component.

(d) After an individual has been assigned to CWEP for nine (9) months, the individual shall not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the highest of:

1. Federal minimum wage;
2. State minimum wage; or
3. The rate of pay for an individual employed in the same or similar occupations by the same employer at the same site.

(8) Alternative Work Experience Program (AWEP) which provides unpaid work experience and training to assist a participant to move promptly into regular public or private employment.

(a) An AWEP assignment shall be limited to a for-profit health care facility such as:

1. Home health agency;
2. Hospital; and
3. Nursing home.

(b) AWEP placements shall be developed and monitored by the Department for Social Insurance or contracting agencies.

(c) Placements shall be made in conjunction with the participant's assessment and employability development plan to ensure that the placement meets the participant's training needs.

(d) The AWEP component shall not be mandatory in every JOBS county.

(e) AWEP participants are required to participate a minimum of twenty (20) hours per week.

(f) The agency shall reassess and revise, if necessary, the individual's employability plan:

1. After each six (6) months of AWEP participation; and
2. At the conclusion of participation in the component.

(9) Other work experience program (OWEP) which provides unpaid work experience and training in nonprofit organizations to assist a participant to move promptly into regular public or private employment.

(a) An OWEP assignment shall be limited to projects which serve a useful public purpose in a field such as:

1. Health;
2. Social service;
3. Environmental protection;
4. Education;
5. Urban and rural development;
6. Welfare;
7. Recreation;
8. Public facilities;
9. Public safety; and
10. Day care;

(b) OWEP placements shall be developed and monitored by the Department for Social Insurance or contracting agencies;

(c) Placements shall be made in conjunction with the participant's assessment and employability development plan to ensure that the placement meets the participant's training needs;

(d) OWEP participants shall be required to participate a minimum of twenty (20) hours per week;

(e) The agency shall reassess and revise if necessary, the individuals employability plan:

1. After each six (6) months of OWEP participation; and
2. At the conclusion of participation in the component.

(10) [~~(9)~~] Post secondary education may be provided if:

(a) The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

(b) The participant has or is capable of achieving the basic literacy skills required by the occupation; and

(c) Jobs are available in the specific occupation for which education and training is needed.

Section 5. JOBS Participation Requirements. (1) Assessment.

(a) When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager;

(b) The case manager shall make an assessment of the individual's employability;

(c) Other agencies will assist in the assessment process as needed;

(d) The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers;

(e) The assessment shall be based on:

1. Education, child care and other supportive service needs;
2. The individual's proficiencies, skills deficiencies, and prior work experience;
3. The needs of the family of the participant; and
4. Any other relevant factors.

(2) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

(a) An employment goal for the participant;

(b) Services to be provided by the agency (including child care);

(c) JOBS activities to be undertaken to achieve the employment goal; and

(d) Other needs of the family.

(3) Special participation requirements for education.

(a) An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

1. The parent is not otherwise exempt; and

2. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

(b) The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

1. The parent fails to make good progress in successfully completing educational activities; or

2. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in education activities is inappropriate for the parent.

(c) For purposes of this requirement, the exemption contained at Section 2(9) of this administrative regulation shall not qualify the participant for exemption from JOBS activities.

~~[(b) For purposes of this requirement, the exemption contained at Section 2(9) of this administrative regulation shall not qualify the participant for exemption from JOBS activities.~~

~~(c) The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:~~

~~1. The parent fails to make good progress in successfully completing educational activities; or~~

~~2. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.]~~

Section 6. Self-initiated JOBS Activities. The agency shall consider an individual self-initiated if the definition specified in 904 KAR 2:017 is met. This shall include the following provisions:

(1) These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training.

(2) Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan.

(3) Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity.

(4) The participant shall be attending:

(a) A JTPA-funded training program; or

(b) A public source or private institution that is:

1. Licensed by the Kentucky Board for Proprietary Education; or

2. Recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(c) An associate degree program which will qualify the participant for a recognized occupation; or

(d) Other education or training which would otherwise be an approved JOBS activity, for example:

1. GED;

2. Adult basic education;

3. Literacy; or

4. Other educational activities which could lead to employment.

Section 7. Good and Satisfactory Progress. (1) Each participant in an education or training component shall meet good and satisfactory progress requirements.

(2) Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution.

(3) Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

(a) Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at intervals determined by the educational providers.

(b) High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

(c) Vocational school. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

(d) Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, not to exceed a twelve (12) month period.

(e) College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

(f) JTPA funded training. Good and satisfactory progress shall be measured at intervals determined by the providers.

Section 8. Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in Section 10 of this administrative regulation).

(2) The conciliation shall be conducted by:

(a) The DSI;

(b) The DES; or

(c) Both agencies jointly.

1. During conciliation, the agency shall determine if additional services are needed to assist with JOBS participation.

2. Participation shall be monitored for thirty (30) days following the issuance of form JOBS-204.

3. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(3) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

Section 9. Good Cause. (1) Good cause for noncompliance in the JOBS Program or refusal to accept employment shall be found if:

(a) The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;

(b) Dependent care is:

1. Not available for a dependent child;

2. Not available for any incapacitated individual living in the same household as a dependent child;

3. Not available or nonreimbursable for a nondependent child over age six (6).

(c) The agency determines that employment would result in a net loss of cash income.

1. The family's gross income less necessary actual work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment was made; and

2. Child care costs exceeding the child care disregard shall be considered in the determination;

(d) The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;

(e) Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

(f) Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

(g) Illness of another household member requiring the presence of the participant;

(h) The participant is temporarily incarcerated;

(i) The agency determines there is discrimination by an employer based on:

1. Age;

2. Race;

3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;

(j) Work demands or conditions render continued employment unreasonable, such as:

1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;

(k) Wage rates are decreased subsequent to acceptance of employment;

(l) The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

(m) A household emergency occurs, such as:

1. Death of a member of the immediate family;
2. Entry into a spouse abuse center;
3. Natural disaster;
4. Court appearance;
5. Victim of crime; or
6. Flooded basement; or

(n) The participant receives a temporary military assignment;

(o) The participant leaves employment in an attempt to improve skills, become self-sufficient and leave the AFDC rolls.

(2) The duration of good cause criteria may vary according to individual circumstances.

Section 10. Sanctions. (1) When a nonexempt AFDC recipient fails to comply with the requirements of the JOBS Program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

(a) Fails without good cause to participate in required activities, including but not limited to:

1. An interview;
2. An assessment; or
3. Employability plan development;

(b) Fails without good cause to participate in the program;

(c) Refuses without good cause to accept employment; or

(d) Terminates employment or reduces earnings without good cause.

(2) A person who has failed to comply without good cause shall be sanctioned, as follows:

(a) The participant is excluded from JOBS activities and services:

1. For the first failure to comply, until the failure to comply ceases;
2. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and
3. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.

(b) In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin.

(c) In a case based on unemployment, the agency shall not take into account the needs of the ~~[sanctioned individual and the]~~ second parent, unless the second parent:

1. Is exempt for reasons other than those in Section 2(6), ~~[5]~~(9) and (11) of this administrative regulation;
2. Is participating; or
3. Has volunteered to participate in JOBS.

(d) A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.

Section 11. Material Incorporated by Reference. (1) Forms necessary for participation in the JOBS Program are being incorporated effective May 1, 1993. These forms include:

(a) PA-33C, revised 1/92;
(b) PA-33D, revised 1/92;
(c) PA-218A, revised 2/93;
(d) ~~[(c)]~~ PA-219, revised 11/92;
(e) ~~[(d)]~~ JOBS-105, revised 6/91;
(f) ~~[(e)]~~ JOBS-201, revised 1/91;
(g) ~~[(f)]~~ JOBS-202, revised 10/90;
(h) ~~[(g)]~~ JOBS-204, revised 1/94 ~~[8/91]~~; and
(i) ~~[(h)]~~ JOBS-205, revised 8/91.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 4, 1994
FILED WITH LRC: February 25, 1994 at 3 p.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Amended After Hearing)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board for Elementary and Secondary Education (SBESE) the management and control of the common schools, including interscholastic athletics therein, and allows the state board to designate an agency to manage athletics pursuant to rules approved by the state board. This administrative regulation designates [~~such~~] an agent for high school athletics and sets forth financial planning and review processes for that agent. Also, this administrative regulation adopts the [~~constitution,~~] bylaws, procedures and rules of that agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) is hereby designated as the State Board for Elementary and Secondary Education's agent to manage interscholastic athletics at the high school level in the common schools, including any private schools desiring to associate with KHSAA and to compete with the common schools.

Section 2. Effective July 1, 1994 the KHSAA shall meet the following conditions in order to remain eligible to maintain the designation as the agent to manage interscholastic athletics:

(1) Accept four (4) at-large members appointed by the State Board for Elementary and Secondary Education to its governing body;

(2) Sponsor an annual meeting of its member schools;

(3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration at the annual meeting;

(4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by **the schools within that region playing that sport** [~~KHSAA~~];

(5) The governing body shall set goals and objectives and perform a self-assessment and submit them annually to the SBESE;

(6) Advise the Department of Education of all legal action brought against the KHSAA;

(7) Permit Board of Control members to serve a maximum of two (2) four (4) year terms with no region represented for more than eight (8) years;

(8) Employ the commissioner and evaluate that person's performance annually and establish all staff positions upon recommendation of the commissioner;

(9) Permit the commissioner to employ all other personnel deemed necessary to perform the staff responsibilities;

(10) Permit the Board of Control to assess fines on member schools;

(11) Utilize trained independent hearing officers instead of eligibility committees for appeals; and

(12) Establish a philosophical statement of principles to use as a guide in eligibility cases.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall submit the following financial documents to the SBESE:

(a) Draft budget for the next two (2) years in November of each year;

(b) Annual audit with KHSAA Commissioner's letter addressing any exceptions within thirty (30) days of receipt of the audit; and

(c) Midyear and end-of-year budget status reports by July 30 and January 30, respectively.

(2) KHSAA shall submit a strategic plan to SBESE by June 1 of each year.

(3) KHSAA shall submit a midyear and annual report by July 30 and January 30, respectively.

(4) KHSAA shall complete an annual review of its bylaws by October 30 of each year, including the following:

(a) Athletic appeals;
(b) Eligibility rules;
(c) Duties of school officials;
(d) Contests; and
(e) Requirements for officials and coaches.

(5) KHSAA shall submit to SBESE a report of all athletic appeals and their disposition by September 1 of each year. The annual report on appeals shall include the name of individual(s), grade, school, and the action taken by KHSAA.

Section 4. [~~3.~~] The [~~constitution,~~] bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1994-95 [~~1992-93~~] as revised, adopted, and approved on **May 3, 1994** [~~March 3, 1994~~] [~~April 17, 1992~~], are hereby incorporated by reference. This material may be inspected and copied at the Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, [~~8 a.m. through 4:30 p.m.,~~] Monday through Friday, 8 a.m. through 4:30 p.m.

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: May 11, 1994
FILED WITH LRC: May 11 1994 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Office for Policy and Budget
(Amended After Hearing)

900 KAR 1:070. Deaf and hard of hearing services.

RELATES TO: KRS 12.290, 29 USC 794, 42 USC 12101 et seq.
STATUTORY AUTHORITY: KRS 12.290, 194.050
NECESSITY AND FUNCTION: In accordance with federal mandates in 29 USC 794, 42 USC 12101 et seq., and KRS 12.290 the Cabinet for Human Resources has a responsibility to **provide accessibility** [~~assure equal entrance opportunities and access~~] to program services directly administered or through contract to persons who are deaf or hard of hearing. This administrative regulation sets forth cabinet procedures.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Human Resources.

(2) "Emergency provisions" means the cabinet offices and agency

facilities shall maintain an updated listing of qualified interpreters who are available on a twenty-four (24) hour basis to provide services **for individuals in need of immediate mental health or social services**.

(3) "Individual" means a person who is deaf or hard of hearing.

(4) "Interpreter **services**" means **services provided by** a qualified interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary **satisfactory and suitable to the interpreting situation**. If the **individual** [~~person~~] seeking services, cabinet staff or contract agency of the cabinet questions the qualifications of the individual designated to provide interpreter services, qualifications may be demonstrated as follows:

(a) By possession of a national interpreter certification; or

(b) By documentation demonstrating passage of the state screening test administered by the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) or verification of equivalent qualifications obtained in other states.

(5) "Ongoing interpreter services" means interpreter services required to meet the needs of residents, patients, or outpatients **in accordance with the patient's or resident's plan of care. Interpreter services are provided to individuals** [~~who are~~] residing in or receiving services from cabinet facilities or contract agents of the cabinet.

(6) "Portal to portal" means time spent by an interpreter working on an authorized assignment whose pay is based on moment of departure from home or office until time of return. **Hourly rates include travel, meals, and other related expenses with the exception of lodging. Lodging shall have prior approval and shall not exceed fifty (50) dollars per night excluding taxes.**

(7) "Time limited" means interpreter services which are provided to an individual **at a specific time and location in order to access** [~~who is deaf or hard of hearing in order to assist with equal entrance opportunities and access to~~] program services directly administered by the cabinet.

(8) "Timely request" for interpreter services **to access program services** means verbal requests which includes requests made by TDD or written requests are deemed to be timely if they are received **at** [~~by~~] the location designated to provide the service at least seventy-two (72) hours, excluding weekends and holidays, prior to the date of service.

(9) "TDD" means telecommunications device for the deaf for individuals who are deaf or hard of hearing.

[~~(10) "Volunteer" means a person who is available to insure benefit program applications for indigent citizens are expedited and not delayed when an interpreter is not readily accessible in the applicant's county. A family member or a friend of a deaf or hard of hearing person who volunteers to provide interpreter services may be considered qualified by the person seeking services. Volunteers may be used only when services are not related to direct social services or mental health or mental retardation services. Exceptions and alternatives to volunteers are specified in Section 2(3) of this administrative regulation.~~]

Section 2. Provision of Interpreter Services. (1) Any deaf or hard of hearing person requesting **program** services directly administered by the cabinet shall have interpreter services made available through the cabinet agency upon the timely request of the individual.

(a) If interpreter services cannot be made available to the individual within the time specified in Section 1(8) of this administrative regulation, the cabinet agency shall arrange for services as soon as an interpreter is available for scheduling by the agency or facility.

(b) The reason for delay in securing interpreter services in excess of seventy-two (72) hours shall be documented.

(2) When available **and appropriate**, the cabinet agency or facility **securing interpreter services** shall use on-site personnel qualified to provide interpreter services **in accordance with Section 1(4) of this administrative regulation**.

(3) [~~The agency, facility or individual may determine that a family member or a friend, who volunteers to provide time limited services, is not appropriate or qualified to provide interpreter services. A determination that a family member or friend is not appropriate or qualified to render services may be based on such factors as emotional or personal involvement or reasons pertaining to confidentiality.~~]

(4) [~~(4)~~] If no **interpreter** [~~qualified person~~] is available **on-site** to provide interpreter services, supervisory personnel shall request assistance from an available community resource or the KCDHH which can access interpreter services.

(4) [~~(5)~~] The Department for Mental Health and Mental Retardation Services and the Department for Social Services facilities shall have emergency provisions as specified in Section 1(2) of this administrative regulation for individuals who are patients or residents.

(5) [~~(6)~~] Any interpreter who provides interpreter services shall comply with federal and state requirements which govern the confidentiality of information and records relating to services provided by the cabinet or its contract agents. **The person providing interpreter services shall sign an OPB-002.**

(6) An individual shall have the right to waive the provision of an interpreter. If the provision is waived, the individual must complete and sign an OPB-001.

Section 3. Payment for Qualified Interpreter Services. (1) Whenever possible, interpreter services involving no additional cost to the cabinet shall be used for time limited and ongoing services.

(2) Payment for nonvolunteer or qualified nonagency staff shall be compensated **as follows:**

(a) At a rate of up to twenty-two (22) dollars per hour for time limited interpreter services. This **rate** [~~shall be an all inclusive payment, which~~] includes mileage **and meals** [~~,~~] within the portal to portal payment.

(b) Interpreters shall be paid for at least two (2) hours of service which can include waiting time due to delays in appointments **and when an individual does not appear for the appointment.**

(c) Payment for hours other than between 8 a.m. - 4:30 p.m. Monday through Friday will be paid at time and a half.

(3) If ongoing interpreter services as defined in Section 1(5) of this administrative regulation are required, the cabinet or contract agency shall purchase interpreter services at a cost effective **negotiated** rate.

Section 4. Complaints. **(1)** Any deaf or hard of hearing person **who believes he was** denied access to **program** services provided directly or through contractual arrangement with the cabinet may file a complaint with the cabinet's Ombudsman Office in writing or through a TDD as follows:

(a) [~~(1)~~] A toll free 800 TDD telephone number is available to access the cabinet Ombudsman Office.

(b) [~~(2)~~] The mailing address for the cabinet's ombudsman is the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, KY 40621.

(c) [~~(3)~~] The Kentucky Relay Service allows hearing persons without a TDD to call a person who is deaf or hard of hearing. This service also permits a deaf or hard of hearing person to call a hearing person. Voice to TDD Is available in Kentucky, toll free, through an 800 telephone number. TDD to voice is available in Kentucky, toll free, through an 800 telephone number.

(2) Complaints shall be handled in accordance with 900 KAR 1:030.

Section 5. Incorporation by Reference. (1) The OPB-001, Waiver of Interpreter Services, dated May 1, 1994, and the OPB-002, Interpreter Confidentiality Assurance Form, dated May 1, 1994, shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected or copied at the Office for Policy and Budget, Cabinet for Human Resources Building, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are from 8 a.m. to 4:30 p.m.

CHARLES H. LAMBERT, Deputy Secretary
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: May 6, 1994
FILED WITH LRC: May 6, 1994 at noon

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MAY 13, 1994
(Note: May 15, 1994 fell on Sunday; therefore deadline was preceding work day)

SECRETARY OF STATE
(Proposed Amendment)

30 KAR 1:010. Certificates of existence or authorization; status of good standing.

RELATES TO: KRS Chapters 271B, 272, 273, 274, 279, 287, 289, 290, 304, 1994 Acts Ch. 389

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: To codify as a regulation the long-standing custom, practice, function and service of the Department of State to issue a "Certificate of Existence" or "Certificate of Authorization" to the many corporations and limited liability companies on file in that department, and to their representatives who request them.

Section 1. (1) As used in this regulation:

(a) "Good standing" means that all annual reports which are lawfully required to be received from a corporation or limited liability company, whether foreign or domestic, have been received and filed in the Department of State, that all other lawfully required statutory documentation has been received and filed, and that all lawful fees therefor have been paid.

(b) A certificate of existence may be issued to a domestic corporation or limited liability company, and a certificate of authorization to a foreign corporation or limited liability company qualified to do business in Kentucky.

(c) "Certificate of existence or authorization" means a certificate issued by the Department of State showing that a corporation or limited liability company is in good standing with that department.

(2) The Department of State may, upon request, issue a certificate of existence or authorization relative to any corporation or limited liability company of record in its office which is in good standing.

(3) The fees charged for the certificate and any accompanying pages shall be those fees set forth in KRS 271B.1-220 and 1994 Ky. Acts Ch. 389.

BOB BABBAGE, Secretary of State

APPROVED BY AGENCY: May 12, 1994

FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on June 22, 1994, at 9 a.m., at the Secretary of State's Office, the Capitol, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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 this 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: Mary Sue Helm, Director, Corporation Division, Secretary of State's Office, 700 Capitol Avenue, Suite 150, The Capitol, Frankfort, Kentucky 40601, (502) 564-3490.

REGULATORY IMPACT ANALYSIS

Contact person: Mary Sue Helm

(1) Type and number of entities affected: It is impossible to predict the number of limited liability companies that will file with the Secretary of State pursuant to 1994 Ky. Acts Ch. 389.

(a) Direct and indirect costs or savings to those affected: There is no direct or indirect cost or savings to limited liability companies as a result of this proposed amendment.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: This proposed amendment creates no reporting requirements on limited liability companies.

(2) Effects on the promulgating administrative body: This proposed amendment has no effect on the Secretary of State's Office.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: This proposed amendment will have no effect on the Secretary of State's budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this proposed amendment revises an existing procedure to include limited liability companies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(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: Is tiering applied? No. Tiering is not applicable to this proposed amendment.

SECRETARY OF STATE
(Proposed Amendment)

30 KAR 1:020. Statements, reports and documents; filing requirements.

RELATES TO: KRS Chapters 271B, 272, 273, 274, 279, 287, 289, 290, 304, 1994 Ky. Acts Ch. 389

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: To codify as a regulation the long-standing custom, practice and function of the Department of State to require that a corporation or limited liability company, whether foreign or domestic, be in good standing before current statements or other documents which are newly submitted by the corporation or limited liability company are received and filed by the department. This serves to enforce the provisions of the various Kentucky statutes on corporations and limited liability companies which require corporations and limited liability companies to file certain statements, reports and documents with the department, together with fees therefor.

Section 1. (1) As used in this regulation, "good standing" means that all annual reports which are lawfully required to be received from a corporation or limited liability company, whether foreign or domestic, have been received and filed in the Department of State, that all other lawfully required statutory documentation has been received and filed, and that all lawful fees therefor have been paid.

(2) A corporation or limited liability company must be in good standing upon the records of the Department of State before that department can file current statements or other documents received from that corporation or limited liability company.

BOB BABBAGE, Secretary of State
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed amendment shall be held on June 22, 1994, at 9 a.m., at the Secretary of State's Office, the Capitol, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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 this 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: Mary Sue Helm, Director, Corporation Division, Secretary of State's Office, 700 Capitol Avenue, Suite 150, The Capitol, Frankfort, Kentucky 40601, (502) 564-3490.

REGULATORY IMPACT ANALYSIS

Contact person: Mary Sue Helm
(1) Type and number of entities affected: It is impossible to predict the number of limited liability companies that will file with the Secretary of State pursuant to 1994 Ky. Acts Ch. 389.
(a) Direct and indirect costs or savings to those affected: There is no direct or indirect cost or savings to limited liability companies as a result of this proposed amendment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: This proposed amendment creates no reporting requirements on limited liability companies.
(2) Effects on the promulgating administrative body: This proposed amendment has no effect on the Secretary of State's Office.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: This proposed amendment will have no effect on the Secretary of State's budget.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this proposed amendment revises an existing procedure to include limited liability companies.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(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: Is tiering applied? No. Tiering is not applicable to this proposed amendment.

SECRETARY OF STATE
(Proposed Amendment)

30 KAR 1:040. Indistinguishable names.

RELATES TO: KRS 271B.4-010, 271B.15-060, 273.177, 273.364, 274.077, 1994 Acts Ch. 389
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 271B.4-010, 271B.15-060, 273.177, 273.364, [and] 274.077, and 1994 Ky. Acts Ch. 389 require the Secretary of State to set standards for the use of indistinguishable [corporate] names.

Section 1. (1) A [Each] corporation or limited liability company applying to use an indistinguishable name shall be an existing corporation or limited liability company registered on the records of the Kentucky Secretary of State and [. Each corporation shall] be in good standing as defined in 30 KAR 1:010.
(2) The business entities [corporations] shall jointly submit one (1) written application in the form set out in Section 2 of this regulation. The application shall state the names and [corporate] mailing addresses of the two (2) business entities [corporations], the indistinguishable name which the second corporation or limited liability company wishes to use, and an acknowledgment that the second corporation or limited liability company agrees to resume the use of its original [corporate] name if it does not acquire the indistinguishable name[, that both corporations agree to continue their corporate existence in Kentucky in good standing and maintain a qualified agent and qualified registered office during the period of the application and that authorized individuals for each corporation shall sign the application].
(3) If the Secretary of State finds that the indistinguishable name filing is correct, he shall permit the two (2) business entities [corporations] to use one (1) indistinguishable name for a nonrenewable sixty (60) day period.
(4) An indistinguishable name shall not be transferred.

Section 2. The form required in Section 1 of this regulation is as follows:

APPLICATION FOR THE USE OF AN
INDISTINGUISHABLE NAME

_____,
[Corporate] Name

_____
[Corporate] Business Address

is a business entity [corporation in good standing in Kentucky as defined in 30 KAR 1:010,] which consents to the use of the indistinguishable name,

_____,
Indistinguishable Name

by _____,
[Corporate] Name

_____.
[Corporate] Business Address

and undertakes to change its name to a name that is distinguishable upon the records of the Secretary of State within sixty (60) days from the date the application is filed. [Both corporations agree to continue their corporate existence in Kentucky in good standing and maintain a qualified registered agent and qualified registered office in Kentucky during the period of the application.]
Each business entity [corporation] agrees to resume its [corporate] name, [which satisfies the requirements of KRS 271B.4-010, 271B.15-060, 273.177, 273.364 and 274.077] if the name change is

not completed prior to the expiration of the application.

This application shall be effective for a nonrenewable sixty (60) day period and is nontransferable.

I certify that the above statements are true and accurate.

Business Entity Name	Business Entity Name
Signature [~~Title~~]	Signature [~~Title~~]
Print or Type Name & Title [~~Corporation~~	Print or Type Name & Title ~~Corporation~~]

BOB BABBAGE, Secretary of State

APPROVED BY AGENCY: May 12, 1994

FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on June 22, 1994, at 9 a.m., at the Secretary of State's Office, the Capitol, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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 this 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: Mary Sue Helm, Director, Corporation Division, Secretary of State's Office, 700 Capitol Avenue, Suite 150, The Capitol, Frankfort, Kentucky 40601, (502) 564-3490.

REGULATORY IMPACT ANALYSIS

Contact person: Mary Sue Helm

(1) Type and number of entities affected: It is impossible to predict the number of limited liability companies that will file with the Secretary of State pursuant to 1994 Ky. Acts Ch. 389.

(a) Direct and indirect costs or savings to those affected: There is no direct or indirect cost or savings to limited liability companies as a result of this proposed amendment.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: This proposed amendment creates no additional reporting requirements on limited liability companies.

(2) Effects on the promulgating administrative body: This proposed amendment has no effect on the Secretary of State's Office.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: This proposed amendment will have no effect on the Secretary of State's budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this proposed amendment revises an existing procedure to include limited liability companies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(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: Is tiering applied? No. Tiering is not applicable to this proposed amendment.

SECRETARY OF STATE
(Proposed Amendment)

30 KAR 1:050. Dishonored checks.

RELATES TO: KRS Chapters 271B, 272, 273, 274, 279, 287, 289, 290, 304, 355, 362, 365, 1994 Ky. Acts Ch. 389

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: The Secretary of State is required to collect a filing fee prior to filing all documents where a fee is specified. Occasionally the Office of the Secretary of State receives payment by a check which is later dishonored. This regulation codifies existing practice and enforces the provisions of various Kentucky statutes that require the payment of fees prior to the filing of documents.

Section 1. (1) Filing fees shall be paid when a document is filed in the Office of the Secretary of State.

(2) An entity which pays for its filing fees by check which is later dishonored shall have its filing voided and removed from the records of the Secretary of State.

BOB BABBAGE, Secretary of State

APPROVED BY AGENCY: May 12, 1994

FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on June 22, 1994, at 9 a.m., at the Secretary of State's Office, the Capitol, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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 this 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: Mary Sue Helm, Director, Corporation Division, Secretary of State's Office, 700 Capitol Avenue, Suite 150, The Capitol, Frankfort, Kentucky 40601, (502) 564-3490.

REGULATORY IMPACT ANALYSIS

Contact person: Mary Sue Helm

(1) Type and number of entities affected: It is impossible to predict the number of limited liability companies and registered limited liability partnerships that will file with the Secretary of State pursuant to 1994 Ky. Acts Ch. 389.

(a) Direct and indirect costs or savings to those affected: There is no direct or indirect cost or savings to limited liability companies or registered limited liability partnerships as a result of this proposed amendment.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: This proposed

amendment creates no reporting requirements on limited liability companies and registered limited liability partnerships.

(2) Effects on the promulgating administrative body: This proposed amendment has no effect on the Secretary of State's Office.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: This proposed amendment will have no effect on the Secretary of State's budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this proposed amendment revises an existing procedure to include new entities.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(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: Is tiering applied? No. Tiering is not applicable to this proposed amendment.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:045. Examination subjects, grading and reexamination.

RELATES TO: KRS 325.261, 325.270

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: This administrative regulation governs examination subjects, grading and reexamination.

~~[Section 1. Examination Subjects. (1) Examinations shall include questions or problems in:~~

~~(a) Accounting practice;~~

~~(b) Theory of accounts;~~

~~(c) Auditing; and~~

~~(d) Business law.~~

~~(2)(a) A person who is licensed to practice law in any state shall be exempt from the business law portion of the examination.~~

~~(b) An attorney seeking exemption shall submit with his examination application a document from the appropriate state licensure authority certifying that he is:~~

~~1. Duly licensed; and~~

~~2. In good standing to practice law.~~

~~Section 2. Grading and Reexamination Procedures. (1)(a) A passing score for an examination shall be a score of at least seventy-five (75) on each subject of an examination.~~

~~(b) Grades shall be mailed ninety (90) days after the examination to the grade release address submitted to the board by the candidate.~~

~~(c) Grades shall not be reported over the telephone, or prior to the grade release date announced at the examination.~~

~~(2)(a) Except as provided in paragraph (b) of this subsection for each examination, if a candidate fails to achieve a score of at least seventy-five (75) on each examination subject, he shall receive conditional credit for each subject passed if he receives:~~

~~1. A passing grade in two (2) subjects; or~~

~~2. A passing grade in accounting practice; and~~

~~3. A grade of fifty (50) or more on the subjects he failed.~~

~~(b) If during one (1) examination, a candidate receives a passing grade in three (3) examination subjects, he shall receive conditional credit for those subjects regardless of the grade received on the final subject.~~

~~Section 3. A conditioned candidate may add conditional credits at subsequent examinations if he receives a passing grade on the subjects reexamined and a grade of not less than fifty (50) on each subject not passed. Previously attained conditional credits shall not be affected by the failure to receive a grade of fifty (50).~~

~~Section 4. (1) A candidate who receives conditional credit, shall pass the subjects he failed within the next six (6) examinations following the examination at which the first conditional credit was earned.~~

~~(2) An additional number of examinations may be granted at the discretion of the board for good cause.~~

~~(3)(a) If a candidate fails to pass all of the examination subjects within the prescribed period, he shall be considered to have failed the examination.~~

~~(b) He may make a new application as a first time candidate.~~

~~Section 5. (1) At any examination, the candidate shall take all subjects for which he has not yet received a passing grade.~~

~~(2) The failure of a candidate to submit an answer paper for any subject of an examination shall disqualify all papers submitted by him at that examination, unless the board, in its discretion, finds good cause not to disqualify the papers submitted.~~

~~Section 6. A person who took the same examination given by the board in a state other than Kentucky may have conditional credits obtained in the other state accepted by the board if:~~

~~(1) The standards under which the conditional credits were obtained are the same as those required by Sections 1 through 5 of this administrative regulation; and~~

~~(2) He meets all other standards required for approval as an examination candidate in Kentucky.~~

~~Section 7. An examination candidate who fails an examination shall be entitled to take future examinations if he complies with the reexamination requirements of 201 KAR 1:130.~~

~~Section 8. On and after February 3, 1994, Sections 9 to 11 of this administrative regulation shall apply to all examination candidates.]~~

Section 1. ~~[9.]~~ Examination Subjects. Examinations shall include questions or problems in:

(1) Accounting & Reporting - Taxation, Managerial, and Governmental and Not-for- Profit Organizations (ARE);

(2) Financial Accounting & Reporting - Business Enterprises (FARE);

(3) Auditing (AUDIT); and

(4) Business Law & Professional Responsibilities (LPR).

Section 2. ~~[10.]~~ Grading and Reexamination Procedures. (1) A candidate shall pass all subjects of the examination to be considered for a certificate.

(2) The passing score shall be seventy-five (75) on each subject.

(3) If during one (1) examination administration a candidate receives a passing score on two (2) or more subjects and grade of fifty (50) or more on each subject not passed, he shall receive conditional credit for those subjects passed.

(4) A conditioned candidate may add conditional credits at subsequent examinations if he receives a passing grade on one (1) of the subjects reexamined and a grade of fifty (50) or more on the subject not passed. Previously attained conditional credits shall not be affected by the failure to receive a grade of fifty (50).

(5)(a) A candidate awarded conditional credit shall pass the

subjects he failed within the next six (6) examinations following the examination at which the first conditional credit was earned.

(b) An additional number of examinations may be granted at the discretion of the board for good cause.

(c)1. If a candidate fails to pass all of the examination subjects within the prescribed period, he shall be considered to have failed the examination.

2. He may make a new application as a first time candidate.

(6) At any examination, the candidate shall take all subjects for which he has not yet received a passing grade.

(7) The failure of a candidate to submit an answer paper for any subject of an examination shall disqualify all papers submitted by him at that examination, unless the board, in its discretion, finds good cause not to disqualify the papers submitted.

(8) A person who took the same examination given by the board in a state other than Kentucky may have conditional credits obtained in the other state accepted by the board if:

(a) The standards under which the conditional credits were obtained are the same as those required by this administrative regulation; and

(b) He meets all other standards required for approval as an examination candidate in Kentucky.

Section 3. [11.] Transfer of Credit. (1) Current candidates who received conditional credit for some sections of the examination prior to May 1994 shall have the credit transferred to the new sections as follows:

(a) Accounting Practice to Accounting & Reporting- Taxation, Managerial, and Governmental and Not-for-Profit Organizations, (ARE);

(b) Theory of Accounts to Financial Accounting & Reporting - Business Enterprises, (FARE);

(c) Auditing to Auditing (AUDIT); and

(d) Business Law to Business Law & Professional Responsibilities (LPR).

(2) A licensed attorney who previously obtained an exemption from the business law portion of the examination may retain the exemption if he maintains his current examination candidacy.

JOHN N. CRAFT, CPA, President

APPROVED BY AGENCY: May 3, 1994

FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994, 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 June 16, 1994, 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) 595-3037.

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: 1200 CPA Exam candidates annually.

1. First Year: This amendment merely deletes old exam format provisions. The new format provisions were approved in July, 1993. Therefore, this change has no costs or savings implications.

2. Continuing costs or savings: See 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): See 1 above.

(b) Reporting and paperwork requirements: No impact.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As indicated in (1)(a)(1), this amendment does not effect costs. All costs for exam changes have been incurred since July 1993.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no further factors to enumerate.

(b) Reporting and paperwork requirements: No change in requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternatives, since this is the only national CPA exam.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlap or conflict exists.

(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 CPA exam candidates exists.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:050. Certificate application.

RELATES TO: 1994 Acts Ch. 248, Sec. 4, 5 [~~KRS 325.261, 325.280~~]

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: This administrative regulation describes the procedure to obtain a certificate as a certified public accountant.

Section 1. (1) A person who has met the qualifications set forth in KRS 325.261 may [~~complete and~~] submit the "Application for Certificate as a Kentucky Certified Public Accountant". [~~The application is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m. Monday through Friday.~~]

(2)(a) The application shall be filed within five (5) years after successful completion of the examination.

(b) Waiver of this five (5) year period may be granted to individuals for good cause, upon application to the board.

(3) With his application, the applicant shall include:

(a) A check or money order made payable to the "Kentucky State Board of Accountancy" for twenty-five (25) dollars, which is nonrefundable;

(b) The certificate of experience as described in 201 KAR 1:062;

(c) One (1) photograph taken within ninety (90) days preceding the application, the back of which shall contain the signature in ink of the applicant;

(d) A list of colleges and universities with graduation dates, degrees awarded, and the official transcript described in 201 KAR

1:130, unless it is already in possession of the board; [~~and~~]

(e) Evidence of completion of an examination on KRS Chapter 325, the administrative regulations promulgated by the board, [~~Kentucky Rules of Professional Conduct~~] and other related questions as the board may deem appropriate; and

(f) Proof of successful completion of the Uniform Certified Public Accountants Examination. If the applicant successfully completed the examination in Kentucky, no documentation is required. If the examination was successfully completed in another jurisdiction, he shall have an "Authorization of Interstate Exchange of Information" submitted to the board on his behalf.

Section 2. The act of filing an application for a certificate shall constitute an agreement that the applicant shall submit the permit to practice application as described in KRS 325.330 [~~will take the oath of a Kentucky Certified Public Accountant~~].

Section 3. Certificate by Reciprocity [~~Without Examination~~]. (1) An applicant for a certificate by reciprocity shall submit or cause to have submitted:

(a) Information required by Section 1(3) of this administrative regulation, except for an official transcript; and

(b) A form, "Authorization for Interstate Exchange of Information", completed by the licensing jurisdiction where the applicant holds a valid certificate and current permit to practice. [~~On the application, an applicant who has satisfied the requirements of KRS 325.280 may request to be granted a certificate as a certified public accountant.~~

~~(2) In addition to the application, fee, and information requirements of Section 1 of this administrative regulation, an applicant shall submit or cause to have submitted:~~

~~(a) A list of colleges and universities attended with graduation date and degree awarded; and~~

~~(b)1. A form, "Authorization for Interstate Exchange of Information, January, 1985";~~

~~2. This form shall be completed by the Board of Accountancy in the state where the applicant holds a valid certificate and current permit to practice.~~]

(2) If the candidate cannot provide the certificate of experience as requested in Section 1 of this administrative regulation; and:

(a) Is applying under the provisions of KRS 325.280(1)(c)2, he shall have the licensing jurisdiction where he holds a valid certificate and permit to practice send certified copies of experience requirement documents from his license file; or

(b) Is applying under the provisions of KRS 325.280(1)(c)3, he shall submit or cause to have submitted one (1) of the following documents which clearly reflects that the candidate has practiced public accounting as a full-time profession for four (4) of the last ten (10) years: proof of public accounting errors and omissions insurance; a letter from an attorney, client, or certified public accountant who has knowledge of the candidate's practice; copies of firm license applications; or copies of personal tax returns.

Section 4. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) "Application for Certificate as a Kentucky Certified Public Accountant (1994)"; and

(b) [~~(3)~~] "Authorization for Interstate Exchange of Information, (1994) [~~January, 1985~~]".

These documents [~~is incorporated by reference and it~~] may be inspected, copied, or [~~and a copy~~] obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. to 4:30 p.m., Monday through Friday.

JOHN N. CRAFT, CPA, President

APPROVED BY AGENCY: May 3, 1994

FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994, 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 June 16, 1994, 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) 595-3037.

REGULATORY IMPACT ANALYSIS

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected: Approximately 600 new CPA applicants annually.

(a) Direct and indirect costs or savings to those affected:

1. First Year: No direct or indirect costs to original applicants. Reciprocal candidates will save the cost of obtaining college transcripts.

2. Continuing costs or savings: Same as 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Will reduce paperwork transcript burden for CPAs properly licensed in other jurisdictions.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings to the agency.

2. Continuing costs or savings: Same as 1 above.

3. Additional factors increasing or decreasing costs: No other factors exist.

(b) Reporting and paperwork requirements: Will reduce transcript collection procedures for reciprocal candidates.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other method exists.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. For the approximately 40 persons per year applying to become Kentucky CPAs, who are currently licensed in good standing in another jurisdiction, the candidate must document the experience of KRS 325.280. Requiring these candidates to obtain college transcripts is an unnecessary regulatory requirement.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:063. Certificate of experience.

RELATES TO: 1994 Acts Ch. 248, Sec. 4 [~~KRS 325.261(1)(d), (2)(a), (b)~~]
STATUTORY AUTHORITY: KRS 325.240
NECESSITY AND FUNCTION: This administrative regulation describes the experience to be documented when one applies to become a certified public accountant.

Section 1. Definitions. (1) "One (1) year" means the completion of 2000 hours of work obtained during an employment period of not less than twelve (12) months. The hours of employment shall not include any leave or holiday time. [~~"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.~~]

(2) [~~"Compilation with disclosures" 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 and includes all required disclosures.~~

~~(3) "Review" means performing inquiry and analytical procedures that provide the accountant with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements for them to be in conformity with generally accepted accounting principles (GAAP) or, if applicable, with another comprehensive basis of accounting.~~

~~(4)~~] "Supervision" means a licensed certified public accountant of this or any state coordinating, guiding, inspecting, controlling and evaluating the activity of an employee.

[~~(5) "Third party reliance" means the trust, dependence or confidence placed by a third party reader of statements based upon the report issued by an independent certified public accountant.~~]

Section 2. (1) A [~~Each~~] certificate applicant shall have submitted by his certified public accountant supervisor [~~employer~~] a "Certificate of Experience" [~~[(1992). This form is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky, 40202 between 8:30 a.m. and 4:30 p.m. Eastern time, Monday through Friday~~].

(2) If the applicant has been employed by more than one (1) employer to meet the experience requirement described in KRS 325.261 and this administrative regulation, a certificate shall be submitted by each certified public accountant supervisor [~~employer~~].

(3) [~~All~~] Work experience, gained after the awarding of a baccalaureate degree, shall be given credit on an hour-worked-for-an-hour-earned basis.

(4) [~~All~~] Work experience gained prior to the awarding of a baccalaureate degree or the completion of baccalaureate course work shall be considered part time.

(a) The certified public accountant supervisor [~~employer~~] shall submit a certificate of experience accompanied by a list of hours worked per week.

(b) The hours worked per week shall be calculated by totaling and dividing by two (2) [~~eighty (80)~~] to determine the full-time equivalency.

Section 3. [~~Public Accounting and State Government~~] Experience Verification. The certificate of experience shall include the following information verified by the supervising certified public accountant:

(1) The name and address of the employing firm, company, agency, or institution of higher education; [~~The appropriate years of experience as required by KRS 325.261(1)(d) or (2)(b). One (1) year of experience means the completion of 2,080 hours of employment;~~]

(2) [~~All~~] Experience was performed under the supervision of a certified public accountant [~~CPA~~] as described in Section 1 of this administrative regulation;

(3) The month, day and year the employment began, and the month, day and year the employment was terminated or the experience was completed;

(4) Total number of hours worked during the employment period excluding holiday or leave time; [~~The experience of subsection (1) of this section shall include a minimum of 500 hours in preparing audits, reviews and compilations with disclosure;~~

~~(5) The experience obtained in the preparation of audits, reviews, and compilations with disclosures shall have included ten (10) of the following analytical techniques and procedures:~~

~~(a) Review, testing and evaluation of internal control policies and procedures related to sales and revenue, costs and expenses, and payroll;~~

~~(b) Verification of accounts receivable;~~

~~(c) Review of inventory procedures and verification of physical inventories;~~

~~(d) Review of reconciliation of client bank accounts;~~

~~(e) Testing inventory valuation and pricing;~~

~~(f) Testing cost and depreciation of fixed assets;~~

~~(g) Testing prepaid and intangible assets and deferred charges;~~

~~(h) Review and verification of accounts payable;~~

~~(i) Review of the adequacy of accrual and allowance provisions;~~

~~(j) Review of preparation of income tax provision;~~

~~(k) Search for unrecorded liabilities;~~

~~(l) Analysis and verification of changes in equity accounts or fund balances;~~

~~(m) Application of appropriate analytical review procedures to revenue and expenses;~~

~~(n) Testing of revenue and purchase cutoff;~~

~~(o) Review for significant subsequent events;~~

~~(p) Review of pertinent legal documents;~~

~~(q) Evaluations of disclosures relating to commitments and contingencies; and~~

~~(r) Review to determine compliance with government standards;~~]

(5) A brief description of the applicant's job duties;

(6) The applicant's working titles during employment; and

(7) The signature of the supervising certified public accountant [~~CPA~~] which attests to the truth and accuracy of the statements made regarding the applicant's experience.

[~~Section 4. The applicant shall have submitted on his behalf a certificate of experience as described in Section 2 of this administrative regulation. This certificate shall include the following information verified by the Chief of the Examinations Division:~~

~~(1) The month, day and year the employment as a field audit agent began and the month, day and year the employment was terminated or the experience was completed;~~

~~(2) The month, day and year the applicant was employed at GS-11;~~

~~(3) A list of the lines of commercial or industrial businesses which the applicant audited in accordance with KRS 325.261(2)(a); and~~

~~(4) An applicant, who hold's a master's degree in accounting or business administration or a master's degree of their equivalent approved by the board, shall have the experience requirement reduced by one (1) year.~~]

Section 4. [~~5.~~] Documentation and Verification of Applicant Experience. (1) A [~~Any~~] certified public accountant who signs a certificate of experience shall maintain supporting documentation of the applicant's experience until the applicant is granted a certificate.

(2) A [~~Any~~] false or misleading statement made by a certified public accountant on a certificate of experience [~~CPA or public~~

~~accountant~~] shall constitute a violation of KRS 325.340(1)(h).

(3) Inspection of supporting documentation may be made by the board or it's designee upon receipt of the application, prior to it's approval.

Section 5. Incorporation by Reference. (1) "Certificate of Experience (1994)" is incorporated by reference.

(2) This document may be inspected, copied, or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. to 4:30 p.m., Monday through Friday.

JOHN N. CRAFT, CPA, President

APPROVED BY AGENCY: May 3, 1994

FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994, 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 June 16, 1994, 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) 595-3037.

REGULATORY IMPACT ANALYSIS

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected: 600 CPA candidates annually.

(a) Direct and indirect costs or savings to those affected:

1. First Year: Will allow persons working in industry, government an education to qualify and reduces experience for candidates in public accounting firms from 2-1 year.

2. Continuing costs or savings: Same as 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Increase costs to public accounting firms to hire entry level persons should ease ability of persons to become licensed.

(b) Reporting and paperwork requirements: Reduces time in which supervising CPAs maintain employment records.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of new forms and cost to process initial increase of applicants. Agency can absorb these costs.

2. Continuing costs or savings: Should reduce personnel time explaining previous complex experience requirement.

3. Additional factors increasing or decreasing costs: No other factors.

(b) Reporting and paperwork requirements: Will reduce length of certificate forms and time for staff review.

(3) Assessment of anticipated effect on state and local revenues: Will increase number of CPA candidates, but paperwork will decrease, therefore, it will be revenue neutral.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only option under changes enacted by HB 546.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no duplication with any other statute or 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. There is only one class of applicants.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

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

RELATES TO: KRS 325.330, 1994 Acts Ch. 248, Sec. 1

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: This administrative regulation describes the procedures and fees for a certified public accountant [~~and public accounting firm~~] to apply for and renew a permit to practice public accounting.

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

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

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

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

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

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

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

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

Section 2. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) "Initial Permit Application (1994)"; and

(b) "Permit Renewal Application (1994)".

(2) These documents may be inspected, copied, or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. to 4:30 p.m., Monday through Friday. [~~Public Accounting Firm Permit. A partnership or professional service corporation, seeking to practice public accounting, shall initially apply for and biennially renew the permit to practice by submitting:~~

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

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

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

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

~~p.m., Monday through Friday.~~]

JOHN N. CRAFT, CPA, President
APPROVED BY AGENCY: May 3, 1994
FILED WITH LRC: May 13, 1994 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994, 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 June 16, 1994, 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) 595-3037.

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:
1. First Year: None. This amendment moves firm registrations to a new regulation dedicated to firms.
2. Continuing costs or savings: Same as 1 above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None exist.
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No effect on agency either positive or negative.
2. Continuing costs or savings: Same as 1 above.
3. Additional factors increasing or decreasing costs: No factors exist.
(b) Reporting and paperwork requirements: Some reduction in copying to firms.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other method is possible under the statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with any other regulation or statute.
(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. More than one class does not exist.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:130. Examination application procedure.

RELATES TO: KRS 325.261, 325.270
STATUTORY AUTHORITY: KRS 325.240, 325.270

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures to apply for admission to the Uniform Certified Public Accountant Examination.

Section 1. Definitions. (1) "Official transcript" means an official statement from a college or university which indicates the college course work completed, degrees awarded and contains an authorizing signature or seal.
(2) "Quarter hour" means [~~shall be~~] equal to 66/100ths of a semester hour.
(3) "Major or concentration" in accounting means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting subjects.
(4) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.
(5) "Accounting course" means a course that contains in the course prefix, or title, the word accounting or some variation.

Section 2. First Time Examination Applicants. The applicant shall submit:
(1) A completed "Application for Admission to the CPA Examination" [~~(1992)~~] that has been signed and acknowledged before a notary public; [~~. The application is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, KY 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday;~~
~~(2) Two (2) photographs taken within ninety (90) days preceding the filing of the application, which bear the applicant's signature on the back;~~]
(2) [~~(3)~~] An official transcript which evidences completion of the educational requirements specified in KRS 325.261 which includes a major or concentration in accounting as defined in this administrative regulation. The educational requirements shall have been completed at a:
(a) College or university:
1. Within the United States; and
2. Whose course credits are accorded full recognition by a Kentucky state-funded four (4) year institution of higher education; or
(b) A postsecondary educational institution:
1. Outside the United States; and
2. Whose course credits are certified by the Foreign Academics Credentialing Service (FACS) or another credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc.;
(c) The certification required by paragraph (b) of this subsection shall state that the:
1. Foreign degree is equivalent to a baccalaureate degree earned in an accredited United States college or university; and
2. Applicant had a major or concentration in accounting;
(d) A FACS application is incorporated by reference and may be inspected or obtained at the board office, 332 West Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday; and [.]
(3) [~~(4)~~] A fee of $140 [~~$125~~], in the form of a check or money order made payable to the "Kentucky State Board of Accountancy". [~~In 1994, the examination fees shall be $140.~~]

Section 3. An application for the May examination shall be filed with the board or postmarked no later than March 1st. Applications for the November examination shall be filed with the board or postmarked no later than September 1st.

Section 4. Provisional Examination Applicants. A person who expects to satisfy the educational requirements of KRS 325.261 and

this administrative regulation within ninety (90) days following an administration of the examination shall be eligible to submit an application for the examination if he:

(1) Satisfies the requirements of Sections 2 and 3 of this administrative regulation;

(2) Submits a transcript of college courses completed;

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

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

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

(d) If a provisional examination candidate fails to submit the information specified in this section, the results of his examination shall not be released and for any future examinations he shall apply as a first-time candidate.

Section 5. Upon approval by the board of the application, the applicant shall be considered an examination candidate.

Section 6. Letter of Intent to Attend the Examination. (1) The board shall mail a letter of intent with information about the dates, times and location of the next scheduled examination to candidates. The letter of intent shall be mailed to the most recent address provided by the candidate.

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

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

1. March 15 [~~April 1~~], for the May examination; and

2. September 15 [~~October 1~~], for the November examination.

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

(b) A candidate who is taking the examination for the first time shall submit the examination fee with his application.

(c) [~~Except as provided in paragraph (d) of this subsection, the examination fee shall be twenty-five (25) dollars per subject. After February 1, 1994,~~] The examination fee shall be thirty-five (35) dollars per subject.

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

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

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

1. Remain a conditional examination candidate;

2. Not be permitted to sit for the examination; and

3. Forfeit deferred examination fees.

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

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

1. Not be permitted to sit for the examination;

2. Forfeit fees paid; and

3. Have his application cancelled.

(b) If an application has been cancelled under the provisions of this section, a subsequent application shall be filed as a first-time application under Section 2 of this administrative regulation.

Section 7. (1) Except as provided by subsections (2) and (3) of this section, an examination fee shall be deferred to the next scheduled examination if:

(a) The candidate has filed a:

1. Letter of intent within the period specified in Section 5 of this administrative regulation; and

2. Written request to defer the fee; and

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

1. Received by the board; or

2. Postmarked.

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

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

Section 8. (1) A person, who is registered with another state to sit for the Uniform CPA Examination, may request to sit for the examination in Kentucky if:

(a) A seat is available; and

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

1. March 15, for the May examination; or

2. September 15, for the November examination.

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

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

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

~~(c)~~] A check or money order[~~:~~

~~1. In~~] the amount of $100 made [~~;~~

~~2.~~] payable to the Kentucky State Board of Accountancy; and

(c) [~~(d)~~] The letter of intent required by Section 6 of this administrative regulation.

Section 9. Candidates shall display during the examination a state driver's license or a picture identification card issued by a state motor vehicle licensing agency or a passport.

(1) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(2) Failure to bring this document to the examination shall prohibit the candidate from sitting for the examination.

Section 10. Incorporation by Reference. (1) "Application for Admission to the CPA Examination" (1994) is incorporated by reference.

(2) This document may be inspected, copied, or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

JOHN N. CRAFT, CPA, President

APPROVED BY AGENCY: May 3, 1994

FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994, 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 June 16, 1994, 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) 595-3037.

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:

1. First Year: CPA candidates will not pay to have passport photos made.

2. Continuing costs or savings: See 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors exist.

(b) Reporting and paperwork requirements: Reduces paperwork.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Reduces agency costs by $1,700 per year for photo processing and handling.

2. Continuing costs or savings: Same in future years as 1 above.

3. Additional factors increasing or decreasing costs: No other factors exist.

(b) Reporting and paperwork requirements:

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the alternate method assessed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict, overlap or duplication with any other 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. Only one class of CPA candidate exists.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(6), 314.042, 314.161

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY AND FUNCTION: KRS Chapter 314 provides for the registration of advanced registered nurse practitioner. It is necessary to assure that applicants meet qualifications as set forth by the board as necessary for safe practice.

Section 1. The application for registration as an advanced registered nurse practitioner in Kentucky (June 1993) required by the board is hereby incorporated by reference. A copy of the form may be obtained, inspected or copied at the Board of Nursing office, 312 Whittington Parkway, Suite 300430, Louisville, Kentucky during regular business hours.

Section 2. Postbasic Program of Study and Clinical Experience. An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board:

(1) Be an established, ongoing and organized program offered on a routine basis to enrollees.

(2) Be accredited or approved for the education of nurses by a recognized accreditation or approval body, or the sponsoring organization holds such accreditation or approval.

(3) Have a program design which prepares enrollees to function in a role consistent with the advanced registered nursing practice specialty designation.

(4) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students.

(5) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students.

(6) Include didactic components.

(7) Include a supervised clinical experience.

(8) Upon successful completion award a diploma or certificate.

(9) Extend over an enrollment period of not less than nine (9) months. An organized postbasic program of study and clinical experience with an enrollment period of less than nine (9) months shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing students for advanced registered nursing practice.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced nursing practice shall be recognized by the board if it meets the following criteria:

(a) Certifying body is an established national nursing organization or a subdivision thereof.

(b) Full membership privileges are restricted to registered nurses.

(c) Eligibility requirements for certification are delineated.

(d) [~~Valid and current registered nurse licensure is required for initial and continuing certification.~~

~~(e)~~] Certification is offered in speciality areas of clinical practice.

(e) [~~(f)~~] Scope and standards of practice statements are promulgated [~~and include:~~

~~1. Belief statement.~~

~~2. Statement on scope of practice.~~

~~3. Standards for specialty area clinical practice.~~

~~4. Guidelines for development of practice protocols.~~

~~5. Guidelines for the provision of comprehensive client care~~].

(h) [~~(g)~~] Mechanism for determining continuing competency is established.

[~~(h) Procedures are established for determining qualifications for initial or continuing certification for members having had disciplinary action taken on license by any jurisdiction.~~]

(2) The board shall maintain a list of recognized national certifying organizations which is hereby incorporated by reference. A copy of the list may be obtained at the Board of Nursing office, 312 Whittington Parkway, Suite 300, Louisville, Kentucky during regular business hours.

Section 4. Practice Pending Registration. (1) An applicant who meets all the requirements for practice as an advanced registered nurse practitioner except for certification by a national certifying organization may be authorized to practice as an advanced registered nurse practitioner subject to the following conditions:

(a) The applicant shall apply for certification from a recognized national certifying organization for the first time.

(b) The applicant shall obtain an advanced registered nurse practitioner of the same specialty, or a licensed physician, to supervise the applicant. For the purposes of this section, supervision shall include, at a minimum, periodic observation and evaluation of the applicant's practice to validate that the practice has been performed according to established standards. The supervisor shall be immediately available either on site or by telephone.

(c) The applicant shall verify to the board that he has applied for certification and has obtained a supervisor.

(d) Practice pursuant to this provision shall extend only until the applicant has learned the results of the request for certification.

(e) Applicants who have previously applied for and been denied certification by a recognized national certifying organization shall be ineligible to practice as an advanced registered nurse practitioner until they have been certified.

(2) A registered nurse who meets all the requirements for practice as an advanced registered nurse practitioner and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:090 pending licensure by endorsement shall be authorized to practice as an advanced registered nurse practitioner for a period of time not to exceed the expiration date of the temporary work permit.

(3) Authorization to practice pursuant to subsections (1) or (2) of this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(4) An individual authorized to practice pursuant to subsection (1) of this section may use the title "ARNP Applicant" or "ARNP App.".

Section 5. Registration Renewal. (1) The advanced registered nurse practitioner registration shall expire or lapse at the time the registered nurse license expires or lapses.

(2) To be eligible for renewal of registration as an advanced registered nurse practitioner, the applicant shall:

(a) Renew the registered nurse license on an active status.

(b) Submit a completed application form for renewal of registration as an advanced registered nurse practitioner;

(c) Submit current renewal application fee; and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced registered nurse practitioner who fails to renew the registered nurse license or is issued a license on an inactive status may not practice as or use the title of advanced registered nurse practitioner until a current active license has been issued by the board and the advanced registered nurse practitioner registration has been reinstated.

Section 6. Registration Reinstatement. (1) If a nurse fails to renew the advanced registered nurse practitioner registration as prescribed by law and administrative regulation, the registration shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of advanced registered nurse practitioner registration, the applicant shall:

(a) Submit a completed application form;

(b) Submit current reinstatement application fee; and

(c) Maintain current certification by a recognized national certifying organization.

Section 7. Certification or Recertification. (1) An advanced registered nurse practitioner who has met requirements and has applied for current, active recertification by one (1) of the national organizations recognized in Section 3 of this administrative regulation may practice as an advanced registered nurse practitioner until the results of the recertification have been received.

(2) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not be registered as an advanced registered nurse practitioner and may not practice or use the title of advanced registered nurse practitioner until the requirements of this administrative regulation have been met.

(3) An advanced registered nurse practitioner who is decertified by the appropriate national organization shall notify the board of that fact and he shall not practice as or use the title of advanced registered nurse practitioner during the period of decertification.

Section 8. An application is valid for a period of one (1) year from date of submission to board. After one (1) year from date of application, the applicant shall be required to reapply.

Section 9. The requirements of this administrative regulation shall not prohibit the supervised practice of nurses enrolled in postbasic educational programs for preparation in advanced registered nursing practice or enrolled in advanced registered nurse practitioner refresher courses.

Section 10. Any registered nurse who holds himself out as a clinical specialist or is known as such, shall be required to register as an advanced registered nurse practitioner if his practice includes the performance of advanced registered nursing procedures.

Section 11. Any nurse practicing as an advanced registered nurse practitioner who is not registered as such by the board, any advanced registered nurse practitioner whose practice is inconsistent with the specialty to which he has been designated, or any advanced registered nurse practitioner who does not recertify and continues to practice as an advanced registered nurse practitioner shall be subject to the disciplinary procedures set in KRS 314.091.

ROBERTA G. SCHERER, President

APPROVED BY AGENCY: April 22, 1994

FILED WITH LRC: May 3, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 22, 1994 at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman

(1) Type and number of entities affected: Approximately 200 applicants annually.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(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: Is tiering applied? Tiering is not applicable.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.

RELATES TO: KRS 314.011(7), 314.193(2)
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY AND FUNCTION: KRS Chapter 314 requires that standards in the performance of advanced registered nursing practice be established by administrative regulation to safeguard the public health and welfare.

Section 1. Definitions. "Established protocol" means a written document jointly approved by the physician and the advanced registered nurse practitioner delineating the areas of practice for the advanced registered nurse practitioner, which is reviewed at least annually and includes those areas of practice related to diagnostic tests, and prescription of medications and treatments. In delineating the areas of practice in the established protocol, the advanced registered nurse practitioner shall conform to the standards of practice of the appropriate nursing organization incorporated by reference in Section 2 of this administrative regulation. Any limitations beyond that set out in the scope and standards of practice statements shall be delineated in the established protocol.

Section 2. The practice of the advanced registered nurse practitioner shall be in accordance with the standards and functions defined in the scope and standards of practice statements for each specialty area as adopted by the board. The board has adopted the following scopes and standards of practice of those national certifying organizations recognized pursuant to 201 KAR 20:056, Section 3(2):

(1) American Nurses' Association, The Scope of Practice of the Primary Health Care Nurse Practitioner, 1985, Standards of Practice for the Primary Health Care Nurse Practitioner, 1987;

(2) American Nurses' Association, Statement on Psychiatric and Mental Health Nursing Practice, 1976, Standards of Psychiatric and Mental Health Nursing Practice, 1982 and Standards of Child and Adolescent Psychiatric and Mental Health Nursing Practice, 1985;

(3) American Nurses' Association, Statement on the Scope of Medical-Surgical Nursing Practice, 1980;

(4) American Nurses' Association, The Role of the Clinical Nurse Specialist, 1986;

(5) American Association of Nurse Anesthetists, Scope of Practice, 1992 Standards for Nurse Anesthesia Practice, 1989, and Patient Monitoring Standards, 1992;

(6) American College of Nurse-Midwives, Standards for the Practice of Nurse-Midwifery, 1993 [~~1987~~];

(7) Nurses' Association of the American College of Obstetricians and Gynecologists (now known as the Association of Women's Health, Obstetric, and Neonatal Nurses), The OB/GYN Women's Health Nurse Practitioner, Role Definition, Competencies and Educational Guidelines, 1990; and

(8) National Association of Pediatric Nurse Associates and Practitioners, Scope of Practice for Pediatric Nurse Practitioners, 1990, Standards of Practice for Pediatric Nurse Practitioners, 1987.

(9) American Academy of Nurse Practitioners, Standards of Practice, 1993.

(10) American Academy of Nurse Practitioners, Scope of Practice for Nurse Practitioners, 1993.

Section 3. In the performance of advanced registered nursing practice acts, the advanced registered nurse practitioner shall practice in accordance with established protocol and shall seek consultation or referral in those situations where practice requirements are not included in the established protocol.

Section 4. Advanced registered nursing practice shall not preclude the practice by the advanced registered nurse practitioner of registered nursing practice as defined in KRS 314.011(5).

ROBERTA G. SCHERER, President
APPROVED BY AGENCY: April 22, 1994
FILED WITH LRC: May 3, 1994 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 22, 1994 at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman
(1) Type and number of entities affected: Approximately 1100 ARNPs.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(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: Is tiering applied? Tiering is not applicable.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 314.041(1), 314.051(1)
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY AND FUNCTION: To assure that applicants for licensure by examination meet minimum standards set forth by the board as necessary for safe practice. To provide some security in the examination process.

Section 1. Eligibility for Licensure by Examination. To be eligible for licensure by examination, applicants shall:

(1) Hold a high school diploma or equivalent.

(2) Have completed an [~~state~~] approved program of practical nursing for licensed practical nurse licensure or an [~~state~~] approved program of registered nursing for registered nurse licensure.

(3) Submit an official transcript of nursing program.

(4) Submit a properly executed application for licensure; current application for licensure fee; and one (1) passport type photograph (two (2) x three (3) inches) taken within the past six (6) months with the photographs signed and dated by the applicant on the front under the facial features and by the nurse administrator of U.S. nursing program (if graduated therefrom) on the back of the photographs. Snapshots are not acceptable.

(5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation.

(6) Notify the board in writing as soon as any new address is established after submitting the application.

(7) Submit a copy of a marriage certificate or court order to change name after the original application is filed.

(8) Abide by and cooperate with security procedures established by the board, when taking the examination.

(9) Apply to take and pass the national council licensure examination or its equivalent.

(10) Pay all necessary fees for application for licensure as stated in this section and, if applicable, Sections 2 and 4 of this administrative regulation.

(11) Meet the requirement of 902 KAR 2:150.

(12) An application for licensure is valid for a period of one (1) year from date the applicant is declared eligible to take the examination [~~filed with the board~~].

Section 2. Graduates of Foreign Nursing Schools. (1) To be eligible for application for licensure by examination, graduates of foreign nursing schools shall submit evidence of the following:

(a) Certificate showing successful completion of commission on graduates of foreign nursing schools examinations (registered nurse applicants only). This requirement shall not apply to the following:

1. An applicant who is licensed as a registered nurse in a United States jurisdiction;

2. An applicant who has received a graduate degree in nursing from a university or college in the United States; or

3. A graduate of a program of nursing in Canada.

(b) If licensed in another United States jurisdiction or country, verification of licensure as a nurse with a statement from the licensing authority that the license is in good standing and has not been revoked, suspended, probated, or otherwise disciplined in that country and that no such action is currently pending.

(c) Legal permanent or temporary residency in the United States according to the laws and regulations of the U.S. Department of Justice, Immigration and Naturalization Services and the U.S. Department of Labor.

(2) Applicants for licensure by examination shall meet requirements as stated in Section 1 of this administrative regulation.

(3) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

Section 3. Licensing Examination Standards. (1) The applicant shall pass the national council licensure examination or an examination acceptable to the board.

(2) An applicant who has taken any examination other than the state board test pool examination or national council licensure examination subsequent to 1953 shall provide evidence to the board that such examination met the following standards of equivalency:

(a) Accepted psychometric procedures are used in the development of the examination;

(b) The examination is available to the board in the English language;

(c) The examination test plan blueprint is available for board review and identifies, to the satisfaction of the board, test content and content weightings;

(d) Test items are available for board review and demonstrate to the satisfaction of the board the testing of competency necessary for safe practice;

(e) At least one (1) of the reliability estimations for the examination is 0.80 or higher;

(f) The examination is revised after each administration to insure currency and security of content;

(g) The examination is given under strict security measures;

Section 4. Retaking the Examination. (1) Examination candidates who fail to achieve a passing result may retake the examination after meeting the requirements as stated in Section 1 of this administrative regulation and, if applicable, Section 2 of this administrative regulation, and after submission of:

(a) The retake application; and

(b) The applicable fee.

(2) The examination may be retaken no more often than once every three (3) months from the date the last examination was taken by the applicant.

Section 5. Release of Examination Scores. The board shall not release examination numerical results to any individual or agency without written authorization from the applicant or licensee except as follows:

(1) The candidate;

(2) Other state boards of nursing;

(3) National Council of State Boards of Nursing Inc.

ROBERTA G. SCHERER, President

APPROVED BY AGENCY: April 22, 1994

FILED WITH LRC: May 3, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 22, 1994 at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,

Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman

(1) Type and number of entities affected: Approximately 3000 applicants annually.

(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: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed 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: Is tiering applied? Tiering is not applicable.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 314.041(5), 314.042(3), (6), 314.051(3), 314.071(1), (2), 314.073(4), (6), 314.161

STATUTORY AUTHORITY: KRS 314.131

NECESSITY AND FUNCTION: To establish fees to carry out the provisions of KRS Chapter 314.

Section 1. Fees for Licensure and Registration Applications. (1) The board shall collect fees for applications for licensure or for registration, and for renewal or reinstatement thereof.

(2) The fees shall not exceed the amounts indicated for the following applications:

(a) Licensure as a registered nurse - seventy (70) dollars.

(b) Licensure as a licensed practical nurse - seventy (70) dollars.

(c) Biennial renewal of active license - fifty (50) dollars.

(d) Biennial renewal of inactive license - thirty-five (35) dollars.

(e) Reinstatement of license - seventy (70) dollars.

(f) Active to inactive license status - thirty-five (35) dollars.

(g) Inactive to active license status - fifty (50) dollars.

(h) Endorsement verification of Kentucky licensure or registration - twenty (20) dollars.

(i) Duplicate license or registration card or letter - twenty (20) dollars.

(j) Registration as an advanced registered nurse practitioner - seventy (70) dollars.

(k) Biennial renewal of registration as an advanced registered nurse practitioner - fifty (50) dollars.

(l) Reinstatement of registration as an advanced registered nurse practitioner - seventy (70) dollars.

(3) An application shall not be evaluated unless current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The board shall collect fees for applications for approval of providers of continuing education and for renewal or reinstatement thereof not to exceed the following amounts:

(1) Initial provider approval - $100.

(2) Reinstatement of provider approval - $100.

(3) Biennial renewal of approval - seventy-five dollars.

(d) Individual review of continuing education offerings - thirty-five (35) dollars.

Section 3. Fees for Services. (1) The board shall collect fees for the following services not to exceed the amounts indicated:

(a) Applicants for licensure who are retaking the examination - sixty (60) dollars.

(b) Verification of licensure or registration letter - ten (10) dollars.

(c) Copy of examination results or transcripts - ten (10) dollars.

(d) Nursing certificate (optional) - thirty (30) dollars.

(2) The fee for copies of statutes, administrative regulations, and duplicated or printed materials shall be one (1) dollar minimum or shall not exceed twenty-five (25) cents per page.

(3) An applicant for licensure who takes or retakes the licensure examination shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and retake [~~administration of examination~~] fees pursuant to subsection (5) of this section.

(4) A nurse who is licensed in another state, United States territory or country and who submits an application for licensure in Kentucky as a registered nurse or a licensed practical nurse, but who is required to take or retake the licensure examination, shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and retake [~~administration of examination~~] fees.

(5) Applicants retaking the licensure examination shall:

(a) Submit fee for retake [~~administration of examination~~] prior to each time examination is taken; and

(b) Submit new application and current fees if more than one (1) year has passed since the date the applicant was declared eligible to take the examination initially [~~date last examination was written or more than two (2) years have passed since the filing date of the original application~~].

(6) Graduates of foreign schools of nursing shall assume responsibility for costs incurred to submit credentials translated into English, commission on graduates of foreign nursing schools certificates, immigration documents and other documents needed to verify meeting licensure requirements.

Section 4. With the exception as stated in Section 3(5)(b) of this administrative regulation, an application[,] which is not completed within one (1) year from the date the application form is filed with the board office[,] shall lapse and the fee shall be forfeited.

Section 5. An applicant who meets all requirements for approval, licensure or registration shall be issued the appropriate approval, license or registration without additional fee.

Section 6. Refunds. (1) Current administration of examination fee on file for an examination candidate unable to be present for the administration of an examination due to unusual circumstances such as weather conditions, accidents, illness, family circumstances, shall be refunded upon submission of written request by candidate.

(2) Overpayment of five (5) dollars or more of current fee shall be refunded upon submission of written request by payer.

Section 7. A partial application fee may be held on record for one

(1) year and shall be applied toward the fee to meet the requirements for licensure or registration.

Section 8. Fees properly collected by the board shall not be refunded, except as provided in Section 6 of this administrative regulation.

ROBERTA G. SCHERER, President
APPROVED BY AGENCY: April 22, 1994
FILED WITH LRC: May 3, 1994 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 22, 1994 at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman
(1) Type and number of entities affected: Applicants retaking the licensure examination. The number is unknown.
(a) Direct and indirect costs or savings to those affected: The amendment changes the name of a fee and how long it is good for.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(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: Is tiering applied? Tiering is not applicable.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:370. Applications for licensure and registration.

RELATES TO: KRS 314.041, 314.051, 314.071
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY AND FUNCTION: To assure that applicants for licensure or registration meet minimum requirements as set forth by the board. To provide consistency in procedures.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, or change of status, or for advanced registered nurse practitioner registration, renewal or reinstatement applicants shall:
(1) Submit completed application to board office on original form supplied by the board;
(2) Submit current application fee, as applicable;
(3) Submit official copy of court records of any misdemeanor and/or felony conviction with a letter of explanation;
(4) Report any disciplinary action taken or pending on nurse licensure applications or license in other jurisdictions;
(5) Have no disciplinary action pending by the board for violation of KRS Chapter 314;
(6) Have paid all monies due to the board;
(7) Submit copy of an official name change document (court order, marriage certificate, divorce decree), if applicable;
(8) Submit additional information as requested by the board; and
(9) Meet additional requirements for:
(a) Licensure by examination as stated in 201 KAR 20:070;
(b) Licensure by endorsement as stated in 201 KAR 20:110;
(c) Licensure by reinstatement as stated in 201 KAR 20:225;
(d) Licensure by renewal as stated in 201 KAR 20:230;
(e) Inactive licensure status as stated in 201 KAR 20:095; or
(f) Advanced registered nurse practitioner registration, renewal or reinstatement as stated in 201 KAR 20:056.

Section 2. A completed application form and all information needed to determine that an applicant meets requirements for licensure or registration shall be postmarked or received by the board no later than the last day for renewal of license or registration.

Section 3. Except as provided in 201 KAR 20:070, Section 1(12), an application which is not completed within one (1) year from the date the application form is filed with the board office shall lapse and the fee shall be forfeited.

ROBERTA G. SCHERER, President
APPROVED BY AGENCY: April 22, 1994
FILED WITH LRC: May 3, 1994 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 22, 1994 at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman

(1) Type and number of entities affected: RNs, LPNs and ARNPs. Number unknown.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(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: Is tiering applied? Tiering is not applicable.

GENERAL GOVERNMENT CABINET
Board of Registration for Professional Geologists
(Proposed Amendment)

201 KAR 31:010. Fees.

RELATES TO: KRS 322A.050

STATUTORY AUTHORITY: KRS 322A.030(5)

NECESSITY AND FUNCTION: This regulation is necessitated by KRS 322A.050 and sets forth in detail all fees charged by the board.

Section 1. Application Fee. The application fee for registration as a professional geologist shall be twenty-five (25) dollars [~~$200~~].

Section 2. Examination Fees. The following fees shall be paid in connection with the licensure examinations required by the board:

(1) The fee for the fundamentals in geology (FG) portion of the examination shall be $175.

(2) The fee for the principles and practice of geology portion of the examination shall be $175.

Section 3. Renewal Fees and Penalties. The following fees shall be paid in connection with licensure renewals and late renewal penalties:

(1) The renewal fee for registration shall be twenty-five (25) dollars;

(2) The late renewal fee, including penalty, for late renewal during the sixty (60) day grace period shall be fifty (50) dollars; and

(3) The reinstatement fee for registration renewal after the end of the sixty (60) day grace period shall be seventy-five (75) dollars.

Section 4. Duplicate Registration Fees. The fee for a duplicate registration shall be ten (10) dollars.

JOHN C. PHILLEY, Ph.D., Board Chairman

APPROVED BY AGENCY: April 21, 994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 27, 1994, at 9:30 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 June 22, 1994, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There will be approximately 2,200 individuals credentialed by the board who would come under this regulation plus all future applicants.

(a) Direct and indirect costs or savings to those affected

1. First year: Application fees have been lowered from $200 per individual to $50 (nonrefundable). Applicants will have to sit for exam which will cost a total of $350.

2. Continuing costs or savings: Renewal fees are as follows: regular renewal $35, renewal during grace period $50, renewal after grace period $75.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The application fee and exam fee should accompany the application. Renewals will require completion of short application.

(2) Effects on the promulgating administrative body: This regulation reduces the application fee, sets the exam fees, and the renewal fees.

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All funds received will be deposited to a trust and agency revolving account.

(3) Assessment of anticipated effect on state and local revenues: This fee should generate approximately $75,000 annually in fees for agency use.

(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 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 the sale of additional musseling licenses and to establish improved reporting requirements. [~~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.~~]

Section 1. All persons except helpers and those specified in Section 4 of this administrati 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 shall accompany each helper when brailing, transporting or selling shells.

Section 2. Only [~~those~~] persons having a valid musseling license or mussel buyers license may [~~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.

Section 3. All musselers shall paint or affix [~~have~~] their department issued identification number [~~clearly painted or affixed~~] to their brail boat so as to be clearly visible to aerial observation. [~~from the air. No~~] Boats [~~shall be~~] used in musseling operations shall have [~~without~~] a licensed musseler in the boat.

Section 4. A [~~No~~] person shall not 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. Mussel License Application Procedure. (1) The department shall not issue more than 500 mussel licenses per calendar year.

(2) Persons wishing to purchase musseling licenses shall apply during the November before the year they wish to mussel.

(3) Applicants shall complete a musseling license application provided by the department.

(4) If the number of applications exceeds 500, the department shall first grant new licenses to current mussel license holders, then select the remaining applicants by a random drawing.

(5) If the number of applications is less than 500, the department shall grant licenses to all applicants, and shall grant licenses to persons applying after November 31 on a first-come, first-served basis until 500 licenses have been issued.

(6) The appropriate resident or nonresident mussel license fee shall accompany each application. The department shall return the fees of those not drawn. [~~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. Except as specified in Sections 7 and 8 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. 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.

(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.

(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. 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 as marked by the red navigation buoys or fifty-five (55) feet of water depth.

(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 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. 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 from which taken.

(1) Washboard mussels, Megalonaias nervosa, 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. Method of Harvest. (1) Mussel harvesting, except as provided in Section 11 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~~] Persons shall not possess dredges or compressed air tanks while on a licensed brail boat.

Section 11. Mussel Harvesters' Reporting Requirements. (1) Mussel license holders shall submit annual written reports to the department by December 31 of each year.

(2) Musselers shall use forms supplied by the department and shall provide the following information requested on the form:

(a) Name, address and mussel license number;

(b) Dates of brailing activity;

(c) Waters brailed;

(d) Name or category of mussels taken;

(e) Weight of each type or category;

(f) Price received per pound of each type or category;

(g) Total value of mussels sold;

(h) Name and license number of buyer who bought mussels.

(3) The department shall not renew the license of a musseler who fails to submit a report or does not provide the required information until the complete report is submitted.

Section 12. Mussel Buyers' Reporting Requirements. (1) Mussel buyers shall complete a mussel transaction report each time shells are acquired.

(2) Mussel buyers shall use forms furnished by the department and shall provide the following information required on the form:

(a) The name of the business;

(b) The date and location where the transaction took place;

(c) The name of the body of water where mussels were harvested;

(d) The name or category name of the mussels purchased;

(e) The number of pounds and the price per pound;

(f) The amount paid for each species or category;

(g) The total amount of the transaction;

(h) The mussel buyer and the musseler shall sign the report and provide their respective license number including the state in which the musseler is licensed.

(3) Mussel buyers shall use forms in sequential order.

(4) Mussel buyers shall submit voided forms to the department. They shall write "void," their license number, date and signature on voided forms.

(5) Mussel buyers shall submit reports on each month's activity. Reports are due by the 15th of the month following the reported transaction.

(6) Mussel buyers who do not acquire shells during a particular month shall submit a report stating that no business was conducted.

(7) The department shall not renew the license of a mussel buyer who fails to submit monthly reports or who does not provide the required information until all completed reports for the year are received.

Section 13. [~~11.~~] 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 14. [~~12.~~] No mussels designated as endangered shall be taken.

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: March 7, 1994
FILED WITH LRC: May 12, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, June 22, 1994 at 10 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish & Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Agency Contact: C. Thomas Bennett

(1) Type and number of entities affected: There are approximately 320 licensed musselers, and 10 licensed mussel buyers.

(a) Direct and indirect costs or savings to those affected: Increasing the availability of licenses will increase income for those individuals who have been unable to obtain a license.

(b) Reporting and paperwork requirements: Increased reporting requirements and frequency of reports will require additional paperwork for the mussel buyers.

(2) Effects on the promulgating administrative body: Some additional effort will be required to handle the increased number of buyer reports. Better recordkeeping and much more accurate information will result.

(a) Direct and indirect costs or savings: No significant additional costs or savings will occur.

(b) Reporting and paperwork requirements: Some 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: Alternative approaches that could be used were 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.

(6) Any additional information or comment: 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 Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 not affect local government.

3. State the aspect or service of local government to which this administrative regulation relates: This regulation does not relate to any aspect or service of local government nor is it mandated by federal statute. It is authorized by KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will not affect local government or any service it provides.

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

301 KAR 2:111. Deer and turkey hunting on special areas.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This administrative regulation pertains to the deer gun and archery season and the turkey season on special areas. This administrative regulation is necessary for the continued protection of the species listed herein, and to insure a permanent and continued supply of the wildlife resource for present and future residents of the state. The function of this administrative regulation is to provide for the prudent taking of deer and turkey within reasonable limits based upon an adequate supply. This amendment is necessary to establish current season dates and hunting requirements [~~rules~~].

Section 1. Deer and turkey Season on Special Areas. Unless otherwise stated, the provisions of 301 KAR 2:171 and 301 KAR 2:140 apply. If dates are specified, these areas are open for deer or turkey hunting only on the dates specified below. Deer hunters on these areas shall possess the signature portion of a valid deer permit. A WMA tag to place on harvested deer shall be issued except on the Westvaco WMA, Cyprus Amax WMA, Robinson Forest WMA and Land Between the Lakes WMA [~~area~~].

(1) Land Between the Lakes Wildlife Management Area (LBL) located in Trigg and Lyon Counties. For LBL general hunting requirements [~~rules~~] refer to administrative regulation 301 KAR 2:050.

(a) Deer archery hunts: any white-tailed deer the last Saturday in September through [~~October 21, October 26 through November 11 and December 15 through~~] December 31, except on quota hunt days and one (1) day immediately before and after each quota hunt.

(b) Quota hunt. Quota gun hunt: white-tailed [~~or fallow~~] deer, [~~and~~] sex of deer as specified on permit, November 5-6 and 26-27 [~~27-28~~].

(c) Quota youth hunt: one (1) white-tailed [~~or fallow~~] deer of either sex as specified on permit on October 22-23 [~~23-24~~]. [~~Statewide administrative regulations apply and~~] Participants shall possess an LBL Youth Hunt Permit.

(d) Bag limits. The deer bag limit for the Kentucky portion of LBL shall be two (2) deer; except that no more than one (1) deer shall be taken during any quota [~~gun or quota archery~~] hunt, and no more than one (1) deer shall be taken during the deer archery hunt.

(e) Turkey archery hunts: one (1) turkey of either sex during the deer archery hunts as specified in subsection (1)(a) of this section. [~~Statewide administrative regulations apply.~~]

(f) Areas open and closed to hunting. State line to Barkley Canal is open to hunting except for developed public use areas (unless posted as open), safety zones and areas posted as closed.

(g) Quota hunt applications. Hunters shall be selected by a drawing. Application forms are available from, and shall be submitted to, Quota Deer Hunt, 100 Van Morgan Drive, Land Between the Lakes, Golden Pond, Kentucky 42211 [~~42231~~]. Completed applications shall be postmarked no later than July 31. If unfilled quotas exist after the regular drawing, quotas may be filled by issuing permits on a first-come, first-served basis at the Land Between the Lakes administrative office.

(h) Checking in and out.

1. Quota gun hunters. All hunters, including those camping in LBL, shall check in prior to hunting, but shall not be required to check out unless a deer is harvested. Hunters shall check in between 8 a.m. and 6 p.m. the day before the hunt, or after 4 a.m. on hunt days.

2. Archery hunters. Archery hunters are not required to check in or out [~~except on quota hunts~~]. All deer and turkey harvested shall be checked out.

(i) Permits and tagging requirements.

1. Permits. An LBL hunter use permit shall be required for each hunter participating in the deer and turkey archery season and an LBL computer card permit shall be required for each hunter participating in the quota [~~gun or quota archery~~] deer hunts.

2. Tags. All harvested deer and turkey shall be tagged with an LBL permanent game tag before being removed from the area. Permanent LBL game tags shall be attached to all harvested deer and turkey at LBL check stations. The LBL permanent game tag shall be used in place of the Kentucky Department of Fish and Wildlife Resources official game check card as proof of check in and for taxidermy purposes.

(j) Prohibited weapons: crossbows.

(k) The taking of coyotes. Hunters participating in the quota gun hunts may take coyotes if they possess a valid deer tag.

(2) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. There will be no hunting on Tuesdays and Wednesdays except when Tuesday or Wednesday is a federal holiday or as follows: December 20-21 and 27-28, then hunting shall be permitted. There will be no hunting on December 25 and January 1.

[~~(a) Deer archery and muzzle-loading rifle season. Any deer: September 25 through October 4.~~]

(a) [~~(b)~~] Youth deer shotgun hunts: during the months of September, October, November and December on selected areas and dates. Any deer. For persons aged ten (10) through sixteen (16) who shall be accompanied by an adult. Shotguns only.

(b) [(c)] Deer gun and archery season. Any deer: September 24 through November 17 and November 18 through January 2, 1995 [October 7 through November 22 and December 16 through December 31] on selected areas.

(c) [(d)] Wild turkey archery season: Any turkey. For deer hunters using archer equipment September 24 [25] through January 2, 1995 [October 4].

(d) [(e)] Wild turkey shotgun only season: any turkey. October 15 [21] through November 16 [22].

(e) [(f)] White turkey season: any white turkey. The post bag limit is one (1) white turkey. Statewide and post season limits and tagging requirements on wild turkey do not apply to the taking of white turkey. White turkey may be taken during any open hunting season on Ft. Campbell. Only those hunters who possess valid unfilled deer tags may hunt white turkey during deer season and only those possessing turkey hunting permits may hunt white turkey during turkey season.

(f) [(g)] Deer bag limits. The bag limit for Kentucky license holders shall be two (2) deer taken by either gun or bow. Prior to the fourth Monday in November [22], once a hunter has taken his first deer on Fort Campbell, he shall be ineligible for weekend drawings (i.e., he may only hunt on Mondays, Thursdays, or Fridays or on weekend standby) until the reopening of deer hunting on the fourth Monday in November [December 16]. Then if he has not harvested his limit he shall be eligible for the weekend drawing until he has taken his limit.

(g) [(h)] Permits and tagging requirements.

[1.] Deer hunters shall purchase a fifteen (15) dollar post hunting and fishing permit which includes a Fort Campbell deer tag, at building #6645. All Fort Campbell deer hunters shall also have the signature portion of a valid Kentucky deer permit in their possession.

(h) [(i)] Prohibited and permitted weapons. Handguns and crossbows are prohibited. Rifles shall be permitted only in areas west of Palmyra Road. All rifles shall be equipped with telescopic sights. Hunting arrows shall not be less than twenty-four (24) inches in length, equipped with broadhead barbless blades not less than seven-eighths (7/8) inch nor more than two (2) inches wide for single two (2) edged blades, or not more than three (3) or more blades. The minimum weight for all broadheads is 100 grains.

[(j) Hunter safety certificate. All deer hunters between the ages of ten (10) and eighteen (18) shall possess a valid hunter safety certificate.]

(3) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties.

(a) Deer archery hunt: any deer October 1 [First Saturday in October] through November 13 [14] and December 12 [20] through December 31 [January 2].

(b) Deer gun hunt: any deer November 19-20 [20-21], November 26-27 [27-28], and December 10-11 [11-12, and December 18-19].

(c) Bag limits. The bag limit shall be two (2) deer, only one (1) deer shall be taken by gun and one (1) by bow.

(d) Applications. Separate applications are required for archery and gun hunts. No more than five (5) hunters shall apply on any one (1) application. Applications shall not be postmarked earlier than [the second Saturday in] August 15 or later than August 31.

1. Archery hunts. Civilians not working on post may apply for weekend archery hunts by mail. Applicants drawn shall be assigned one (1) weekend of archery hunting. Weekday archery hunting shall be on a first-come, first-served basis. Sign-up for weekday hunts shall be made at least forty-eight (48) hours in advance at Hunt Control Headquarters Building 112.

2. Gun hunts. Civilians not working on post may apply by mail for a two (2) day gun hunt. Hunters shall be assigned one (1), two (2) day hunting period. [Hunters who have not harvested a deer and active duty military personnel who did not apply for the quota hunt may sign up on a first come first served basis for hunting on December 18-19.]

3. Application procedure. All applications shall contain the type of hunt (gun or bow), names and addresses of each hunter, a self-addressed stamped envelope and an eighteen (18) dollar money order, certified check or cashier's check for each hunter, made payable to Treasurer of the United States. Mail applications to Hunt Control Office, Attn: ATZK-EHE, Fort Knox, Kentucky 40121-5000.

(e) Check station. All deer taken during the archery season shall be checked in at Building 112. Deer taken during the gun hunts shall be checked in at Building 7331 on 9th Avenue or the North Mt. Eden Rd station. Successful hunters shall have the completed hunter portion of their game check card in their possession.

(f) Hunting hours: one-half (1/2) hour before sunrise until 5 p.m. local prevailing time. Hunters shall clear hunt control by 7 p.m.

(g) Weapons. Only breech-loading and muzzle-loading shotguns of twelve (12) gauge maximum and twenty (20) gauge minimum firing a single projectile, and muzzle-loading rifles of .38 caliber to .58 caliber firing a single projectile shall be permitted. Magazined shotguns shall be plugged to a three-shot capacity. Hunters shall have no more than ten (10) rounds of ammunition in possession for any one (1) hunting day. Crossbows shall only be valid for use by holders of a disability exemption and only during archery season.

(h) Hunter safety certificates. All deer hunters under the age of fifty-five (55) [fifty (50)] shall possess a valid hunter safety certificate.

(i) Special equipment. All hunters shall possess a Fort Knox special hunting and fishing map and a flashlight.

(j) Intoxicants. Intoxicants are prohibited in vehicles and hunting areas.

(k) Post permit. All persons deer hunting on the Fort Knox Military Reservation shall possess a Fort Knox Deer Permit.

(4) Bluegrass Ordnance Depot Activity located in Madison County.

(a) Deer archery hunts: during the month of October and November on selected dates.

(b) Deer gun hunts: during the month of November and December on selected dates.

(c) Bag limits. The post bag limit is one (1) deer of the sex announced on the day of the hunt.

(d) Applications. Hunters may submit applications for archery or gun hunts. Applications for the drawings shall be made on a three (3) inch by five (5) inch card with only two (2) applicants allowed per card. More than one (1) card per individual shall disqualify the applicant. When a maximum of two (2) people desire to hunt together, the required information shall be written on a single three (3) inch by five (5) inch card. Each applicant or pair of applicants shall submit with their application a five (5) dollar check or money order[, and mailed in an envelope]. Each applicant shall furnish name and address (including zip code), date of birth, Social Security number, telephone number and specify their choice for shotgun or archery hunting. Hunters, their hunting dates and areas shall be selected by a drawing. All envelopes shall be postmarked no earlier than August 1 or later than August 30 to be eligible for the drawing. Improper applications shall be discarded. A twenty (20) dollar per person fee shall be charged for hunting payable on the assigned hunting date. Mail all applications to: Lexington-Bluegrass Depot, Attention: Land Manager, Lexington, Kentucky 40511-5010.

(e) Weapons. Only breech-loading and muzzle-loading shotguns of twelve (12) gauge maximum and twenty (20) gauge minimum firing a single projectile, and muzzle-loading rifles of .45 or larger caliber firing a single conical projectile shall be permitted. Only longbows, recurve and compound bows having a pull weight of forty-five (45) [forty (40)] pounds or greater are permitted. Crossbows are prohibited.

(f) Harvest quota. Hunting shall be discontinued whenever the designated deer harvest quota is reached or upon the direction of the Activity Commander.

(g) Hunter safety certificates. All deer hunters born after January 1, 1970 shall possess a valid hunter safety certificate.

(5) Reelfoot National Wildlife Refuge located in Fulton county.

(a) Quota hunts: any deer first Saturday in November for two (2) consecutive days [November 6, 7, 13, and 14, and lasting for one (1)

~~day each~~].

(b) Drawing. Only those persons selected by a drawing may participate in the quota hunts. If unfilled quotas exist after the regular drawings, quotas shall be filled by issuing permits on a first-come, first-served basis. [~~Hunters shall hunt for a maximum of one (1) day only.~~] Applications shall be accepted only during the month of July and shall be accompanied by an application fee of five (5) dollars.

(c) Archery hunt: any deer October 3-16 [~~4-17~~].

(d) Bag limits. The refuge bag limit is four (4) [~~two (2)~~] deer. Only two (2) [~~one (1)~~] deer shall be taken by gun.

(e) Check stations. All gun deer hunters shall check in and out at designated refuge check stations. Archery hunters shall check their deer at the nearest state check station.

(f) All deer hunters shall have purchased a ten (10) dollar refuge hunting permit.

(6) Westvaco public hunting areas. All persons hunting shall possess a valid Westvaco hunting permit.

(a) Persons shall not operate vehicles off designated roads.

(b) [~~No~~] Persons shall not hunt from or place a tree stand on Westvaco property within fifty (50) yards of a property line.

(c) [~~No~~] Persons shall not ignite, feed or allow an open fire on the area.

(7) Zilpo and Twin Knobs Campgrounds in Bath and Rowan Counties.

(a) Persons applying and hunting shall follow the procedures and administrative regulations described in administrative regulation 301 KAR 2:171, Section 10.

(b) Only persons with a disability license issued by the Department of Fish and Wildlife Resources [~~Federal Social Security~~] may apply and shall [~~must~~] have this license in their possession when they hunt.

(c) Quota gun hunt: second Saturday in December for two (2) consecutive days.

(8) Cyprus Amax and Robinson Forest WMA's in Breathitt, Knott and Perry counties.

(a) Archery hunt: bucks only. October 1-January 15, 1995.

(b) Deer muzzleloader hunt: bucks only. October 15-16 and December 10-16.

(c) Bag limit. The bag limit is one (1) deer.

(d) Checking deer. Deer that are harvested on the area shall be checked in at the nearest state deer check station.

(e) User permits. All deer hunters shall have in their possession an individual user permit.

(f) Hunting shall not be allowed on areas posted as closed to hunting.

(g) All hunters shall check in and out at the self-service check stations.

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: March 7, 1994

FILED WITH LRC: May 12, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 28, 1994 at 11:30 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, KY. Individuals interested in attending this hearing shall notify this agency in writing by June 23, 1994, 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: Mr. Arthur R. Boebinger, Acting 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: C. Tom Bennett

(1) Type and number of entities affected: An estimated 211,000 persons will participate in white-tailed deer hunting, and an estimated 20,000 persons will participate in wild turkey hunting. An unknown portion of these will avail themselves of the hunting opportunities offered on the federal installations spoken to in this administrative regulation.

(a) Direct and indirect costs or savings to those affected: Involve the purchase of a state hunting license, one deer permit, and special hunting permits required by the administration of the federal installations. Indirect costs are determined by the individual hunter, depending on his level of participation.

1. First year: Persons participating in the deer hunting proposed for authorization by this administrative regulation would be required to possess a valid hunting license ($12.50 for residents) and a deer permit ($21) unless exempt by administrative regulations. Those participating in turkey hunting would be required to also purchase a turkey permit ($17).

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): An additional hunting fee is charged by Fort Knox, Blue Grass Ordnance Depot Activity, LBL, Reelfoot Refuge, Westvaco, and Fort Campbell.

(b) Reporting and paperwork requirements: Hunters will be asked to check their deer and turkey at a check station and fill out a tag denoting specific information about the deer and turkey taken. Hunters must complete applications for drawing hunts.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with promulgation and enforcement of the administrative regulation.

1. First year: The estimated department cost associated with establishing and carrying out the provisions of this administrative regulation is $2,500.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Deer and turkey hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $32 per day of hunting according to the 1990 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based on the wise use of renewable resources and the fact that white-tailed deer and turkey populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied: Yes. Special seasons, limits and procedures are recognized for various federal installations based on deer densities and other use considerations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

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 county 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 the sale of hunting licenses and deer tags. This office receives a $.75 fee for selling licenses and deer or turkey tags. The county circuit courts are utilized for prosecution of cases made against violators of these administrative regulations and recover their costs as the court cost portion of any levied fines.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:050. [~~Definitions and~~] General provisions of [;] KPDES permitting program.

RELATES TO: KRS 224.01-010, 224.10-110, 224.16-050, 224.70-100, 224.70-110

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100

NECESSITY AND FUNCTION: KRS Chapter 224 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into the waters of the Commonwealth. KRS 224.16-050 empowers the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251 et seq.). Permits issued pursuant to KRS 224.16-050 [~~224.034~~] shall be referred to as KPDES permits. [~~This regulation defines essential terms used in connection with the following KPDES regulations: 401 KAR 5:050; 401 KAR 5:055; 401 KAR 5:060; 401 KAR 5:065; 401 KAR 5:070; 401 KAR 5:075; 401 KAR 5:080; and 401 KAR 5:085.~~]

[~~Section 1. Definitions. Whenever used in the KPDES regulations, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these regulations, the following terms have the meaning as set forth herein. Terms not further defined in this section have the meaning given by KRS 224.01-010 and regulations promulgated pursuant thereto.~~

~~(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.~~

~~(2) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject under KRS Chapter 224, and regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, and toxic effluent standards.~~

~~(3) "Application" means the forms approved by the cabinet, which are equivalent to the EPA standard NPDES forms for applying for a KPDES permit, including any additions, revisions or modifications to the forms.~~

~~(4) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.~~

~~(5) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.~~

~~(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also includes treatment requirements, operating procedures, practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.~~

~~(7) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.~~

~~(8) "CWA" means the Clean Water Act as subsequently amended (33 USC Section 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.~~

~~(9) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.~~

~~(10) "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program under CWA Section 402 (33 USC Section 1342).~~

~~(11) "Direct discharge" means the discharge of a pollutant into waters of the Commonwealth when such discharge is not included under the definition of "indirect discharger."~~

~~(12) "Director" means the secretary of the cabinet, or an authorized representative. For purposes of permit issuance decisions, the director is the director of the Division of Water, in the Department for Environmental Protection.~~

~~(13) "Discharge" or "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any point source. This definition includes, but is not limited to, additions of pollutants into waters of the Commonwealth from surface run-off which is collected or channelled by man; discharges through pipes, sewers or other conveyances whether publicly or privately owned which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.~~

~~(14) "Discharge monitoring report (DMR)" means the cabinet's form including any subsequent additions, revisions, or modifications, for the reporting of self monitoring results by permittees.~~

~~(15) "Draft permit" means a document prepared under 401 KAR 5:075, Section 3, indicating the director's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as provided in 401 KAR 5:075, Section 2, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as provided in 401 KAR 5:075, Section 2, is not a draft permit. A proposed permit is not a draft permit.~~

~~(16) "Effluent limitation" means any restriction imposed by the~~

director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the Commonwealth.

(17) "Effluent limitations guidelines" means a regulation published by the administrator under CWA Section 304(b) (33 USC Section 1314(b)) to adopt or revise effluent limitations.

(18) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(19) "Facility or activity" means any KPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the KPDES program.

(20) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(21) "Hazardous substance" means any substance designated under 40 CFR Part 116.

(22) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(23) "Kentucky Pollutant Discharge Elimination System (KPDES)" means the Kentucky program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements. The KPDES regulations are: 401 KAR 5:050, 401 KAR 5:055, 401 KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, 401 KAR 5:080, and 401 KAR 5:085.

(24) "Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator under the CWA or KRS Chapter 224.

(25) "Major facility" means any KPDES facility or activity classified as such by the director in cooperation with the regional administrator; designation as a "major industry," as set forth in 401 KAR 5:085, Section 2, does not indicate automatic classification as a major facility.

(26) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(27) "Municipality" means a city, district, or other public body created by or under the Kentucky Revised Statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under CWA Section 208 (33 USC 1288).

(28) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements.

(29) "New discharger" means any building, structure, facility or installation:

(a)1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which has never received a finally effective NPDES or KPDES permit for discharges at that site; and

4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

(30) "New source" means any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced:

(a) After promulgation of EPA's standards of performance or pretreatment standards which are applicable to such source; or

(b) After proposal of EPA's standards of performance or pretreatment standards which are applicable to such source, but only if the federal standards are promulgated within 120 days of their proposal.

(31) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under the KPDES program.

(32) "Permit" means an authorization, license, or equivalent control document issued by the cabinet or U.S. EPA to implement the requirements of the KPDES or NPDES regulations. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

(33) "Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.

(34) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(35) "Pollutant" means as defined in KRS 224.01-010 including filter backwash, munitions and cellar dirt, except:

(a) Radioactive materials which are regulated under the Atomic Energy Act of 1954, as amended (42 USC Section 2011 et seq.);

(b) Sewage from vessels; or

(c) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by the state or federal agency administering the Underground Injection Control program pursuant to the Safe Drinking Water Act (42 USC Section 300f et seq.) or by the cabinet pursuant to 401 KAR Chapter 5 and the appropriate agency and if the state agency determines that the injection or disposal will not violate any applicable law or regulation.

(36) "Primary industry category" means any industry category listed in 401 KAR 5:060, Section 10.

(37) "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 POTW.

(38) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(39) "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(40) "Publicly owned treatment works (POTW)" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. For purposes of pretreatment in 401 KAR 5:055, Section 9, POTW includes a municipality having jurisdiction over the indirect discharges to and discharges from the treatment works.

(41) "Recommencing discharger" means a source which recommences discharge after terminating operations.

(42) "Regional administrator" means the regional administrator of the Region IV office of the EPA or the authorized representative of the regional administrator.

(43) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and regulations promulgated pursuant thereto.

(44) "Secondary industry category" means any industry category which is not a primary industry category.

(45) "Sewage from vessels" means human body wastes and the

~~wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under CWA Section 312 (33 U.S.C Section 1324).~~

~~(46) "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water run off, that are discharged to or otherwise enter a publicly owned treatment works.~~

~~(47) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.~~

~~(48) "Total dissolved solids (TDS)" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.~~

~~(49) "Toxic pollutant" means any pollutant listed as toxic in 401 KAR 5:080, Section 5.~~

~~(50) "Twenty four (24) hour composite sample" means not less than twelve (12) effluent portions collected at regular intervals over a period of twenty four (24) hours which are composited in proportion to flow; "grab sample" means a single effluent portion which is not a twenty four (24) hour composite sample.~~

~~(51) "Underground injection" means a "well injection."~~

~~(52) "Variance" means any mechanism or provision under the KPDES regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.~~

~~(53) "Waters of the Commonwealth" means as defined in KRS 224.01-010.~~

~~(54) "Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.~~

~~(55) "Well injection" means the subsurface implacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.~~

~~(56) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.]~~

Section 1. [~~2.~~] Compatibility With the CWA. The KPDES administrative regulations promulgated pursuant to KRS Chapter 224 are intended to be compatible with the federal regulations adopted pursuant to CWA.

Section 2. [~~3.~~] Conflicting Provisions. The provisions of the KPDES administrative regulations are to be construed as being compatible with and complementary to each other. If [~~In the event that~~] any of these administrative regulations are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

~~[Section 4. Severability. In the event that any provision of KRS Chapter 224 or any regulation promulgated pursuant thereto is found to be invalid by a court of competent jurisdiction, the remaining KPDES regulations shall not be affected or diminished thereby.~~

~~Section 5. Abbreviations and Acronyms. The following abbreviations and acronyms, as used throughout the KPDES regulations, shall have the meaning given below:~~

~~(1) "BAT" means best available technology economically achievable;~~

~~(2) "BCT" means best conventional pollutant control technology;~~

~~(3) "BOD" means biochemical oxygen demand;~~

~~(4) "BPT" means best practicable technology currently available;~~

~~(5) "BMPs" means best management practices;~~

~~(6) "COD" means chemical oxygen demand;~~

~~(7) "CFR" means code of federal regulations;~~

~~(8) "DMR" means discharge monitoring report;~~

~~(9) "KAR" means Kentucky Administrative Regulations;~~

~~(10) "KPDES" means Kentucky Pollutant Discharge Elimination System;~~

~~(11) "KRS" means Kentucky Revised Statutes;~~

~~(12) "NPDES" means National Pollutant Discharge Elimination System;~~

~~(13) "POTW" means publicly owned treatment works;~~

~~(14) "SIC" means standard industrial classification;~~

~~(15) "TSS" means total suspended solids; and~~

~~(16) "USC" means United States Code.]~~

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this amended regulation has been scheduled for June 28, 1994, at 10 a.m. (eastern time), in the Auditorium of the State Office Building at Mero and High Streets in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by June 23, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard 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 amended regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of business (4:30 p.m., eastern time) on June 28, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before June 23, 1994 between 8:00 a.m. and 4:30 p.m. (eastern time).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 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: The regulation establishes general provisions of the Kentucky Pollutant Discharge Elimination System (KPDES) permit program. All definitions are being removed from this regulation to be compiled into a new regulation (401 KAR 5:001) according to KRS 13A.222(4)(e). This regulation applies to all wastewater dischargers in the Commonwealth which represents over 9300 facilities. The remaining sections of this regulation relate to the compatibility of the KPDES regulations with the Clean Water Act and any conflicting provisions. Those sections are not being amended.

(a) Direct and indirect costs or savings to those affected: The removal of definitions will not have any costs or savings to the regulated community.

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: There are no effects on this agency from the removal of definitions from this regulation.

(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: There are no reporting or paperwork requirements imposed by the deletion of definitions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Division of Water considered defining all terms used in each regulation in Section 1 of that regulation, but that approach would have required that many terms be duplicated throughout each individual regulation. That would have generated longer regulations, requiring more printing time, paper, and other resources. Also, if a definition changed, then each regulation would have had to be amended. Therefore, to save time and expenses, both by this agency and the Regulations Compiler, the Division decided that one regulation will be used to define the terms used by 401 KAR Chapter 5. This approach will also make it easier for the regulated community and public to find the definitions that appear throughout the chapter.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. 401 KAR 5:001 will contain all of the definitions deleted from this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict is expected.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict is expected.

(6) Any additional information or comments: No

TIERING: Was tiering applied? No, tiering was not applied because the remaining provisions apply to all dischargers equally.

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 regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to any local government unit which operates facilities that discharge to waters of the Commonwealth.

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. None, because this regulation change is only to remove definitions. The remaining general provisions are not being changed.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This is no federal mandate as to which state regulation contains definitions. The regulation change is only to delete definitions (to be incorporated in 401 KAR 5:001).

2. State compliance standards. None. This regulation establishes no compliance standards.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? This regulation does not impose any new requirements. Only the definitions are being deleted.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards being imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:055. Scope and applicability of the KPDES program.

RELATES TO: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 224.99-010

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 provides that the Natural Resources and Environmental Protection Cabinet may require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) provides that the cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251 et seq.) subject to the conditions imposed in 33 USC Sections 1342(b) and (d), KRS 224.16-050(1) requires that any exemptions granted in the issuance of these [~~such~~] permits shall be pursuant to 33 USC Sections 1311, 1312, and 1326(a). Further, KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an [~~any~~] effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This administrative regulation contains the scope and applicability of the KPDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, and requirements for disposal into wells, into POTWS and by land application.

Section 1. Applicability of the KPDES Requirements. The KPDES program requires permits for the discharge of pollutants from a [~~any~~] point source into waters of the Commonwealth. Compliance with the KPDES program requirements constitutes compliance with the operational permit requirements of 401 KAR 5:005, [~~Section 3(2)~~] and requirements related to the operational permit. Failure to obtain a KPDES permit does not relieve a discharger subject to the KPDES program from complying with the applicable performance standards of that program, 401 KAR 5:050 to 5:080 [~~5:085~~], inclusive.

(1) Specific inclusions. The following are examples of specific categories of point sources requiring KPDES permits for discharges. These terms are further defined in 401 KAR 5:001 [~~5:060, Sections 5 through 12~~].

(a) Concentrated animal feeding operations;

(b) Concentrated aquatic animal production facilities;

(c) Discharges into aquaculture projects;

(d) Discharges from separate storm sewers; [~~and~~]

(e) Silviculture point sources; and

(f) Permits required on a case-by-case basis.

1. Various sections of 401 KAR 5:060 allow the cabinet to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, and certain other facilities covered by a general permit that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

2. If the cabinet decides that an individual permit is required under this section, except as provided in subparagraph 3 of this paragraph, the cabinet shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit under 401 KAR 5:060 within sixty (60) days of notice, unless permission for a later date is granted by the cabinet. The question whether the designation was proper shall remain open for consideration during the public comment period under 401 KAR 5:075 and in any subsequent hearing.

3. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under 401 KAR 5:060, Section 12 the cabinet may require the discharger to submit a permit application or other information regarding the discharge under 401 KAR 5:060, Section 1(6). In requiring the information, the cabinet shall notify the discharger in writing and shall send an application form with the notice. The discharger shall apply for a permit under 401 KAR 5:060, Section 12 within sixty (60) days of notice, unless permission for a later date is granted by the cabinet. The question whether the initial designation was proper shall remain open for consideration during the public comment period under 401 KAR 5:075 and in any subsequent hearing pursuant to KRS 224.10-420(2).

(2) Specific exclusions. The following discharges do not require KPDES permits:

(a) [~~Any~~] Discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or [~~any~~] other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other [~~such~~] materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured in waters of the Commonwealth for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the Commonwealth which are regulated under CWA Section 404 (33 USC Section 1344).

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect discharges. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the Commonwealth are eliminated.

(d) [~~Any~~] Discharge in compliance with the instructions of an on-scene coordinator pursuant to 33 CFR Part 151 (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR Part 153 (Pollution by Oil and Hazardous Substances) or discharges in compliance with the state hazardous substance contingency plan issued pursuant to KRS 224.01-400.

(e) [~~Any~~] Introduction of pollutants from nonpoint source agricultural and silvicultural activities, including storm water run-off from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges form concentrated animal feeding operations [~~as defined in 401 KAR 5:060, Section 5~~], discharges from concentrated aquatic animal production facilities [~~as defined in 401 KAR 5:060, Section 6~~], discharges to aquaculture projects [~~as defined in 401 KAR 5:060, Section 7~~], and discharges from silvicultural point sources [~~as defined in 401 KAR 5:060, Section 9~~].

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the cabinet [~~director~~] may otherwise require under 401 KAR 5:065, Section 2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act (42 USC Section 300f et seq.), and which are issued under a state or federal Underground Injection Control program; and, underground injections and disposal wells which are permitted by the cabinet pursuant to 401 KAR Chapter 5.

(i) Discharges which are not regulated by the U.S. EPA under CWA Section 402 (33 USC Section 1342).

Section 2. Prohibitions. No permit shall [~~may~~] be issued by the cabinet [~~director~~]:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of KRS Chapter 224, or administrative regulations promulgated pursuant thereto;

(2) When the regional administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR Section 123.44 [~~75~~];

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Kentucky and all affected states;

(4) When, in the judgment of the secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on [~~any of the~~] waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of [~~any~~] radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For the discharge inconsistent with a water quality management plan or plan amendment approved by EPA; or

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Kentucky water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the KPDES administrative regulations and for which the cabinet has performed a pollutant load allocation for the pollutants to be discharged, shall [~~must~~] demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(b) The existing dischargers into that segment are subject to schedules of compliance designed to bring the segment into compliance with Kentucky water quality standards.

Section 3. Variance Requests by Non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under [~~any of~~] the following statutory or regulatory provisions within the times specified in this section:

(1) Fundamentally different factors. A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows: [~~made by the close of the public comment period under 401 KAR 5:075, Section 5.~~]

(a) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under 401 KAR 5:075.

(b) For a request from best available technology economically achievable (BAT) or best conventional pollutant control technology (BCT), by no later than:

1. July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3,

1989 is not later than that provided under previously promulgated regulations; or

2. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987. The request shall explain how the requirements of 401 KAR 5:080, Section 3, have been met.

(2) Nonconventional pollutants. A request for a variance from the BAT requirements for "nonconventional" pollutants, pursuant to Section 7(1) of this administrative regulation because of the economic capability of the owner or operator, or pursuant to Section 7(2) of this administrative regulation because of certain environmental considerations, shall [~~must~~] be made as follows. A nonconventional pollutant variance shall be available only for ammonia; chlorine; color; iron; total phenols (4AAP), as determined by the U.S. EPA to be a pollutant covered by CWA Section 301(b)(2)(F); and any other pollutant which the U.S. EPA lists under CWA Section 301(g)(4). [~~A completed request must be submitted no later than the close of the public comment period under 401 KAR 5:075, Section 5 demonstrating that the applicable requirements of 401 KAR 5:080 have been met.~~]

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Submitting an initial request to the cabinet stating the name of the discharger, the permit number, the outfall number, the applicable effluent guideline, and whether the discharger is requesting a modification under Section 7(1) or (2) of this administrative regulation or both Section 7(1) and (2) of this administrative regulation. This request shall have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 17, 1977; and

2. Submitting a completed request no later than the close of the public comment period under 401 KAR 5:075, Section 5 demonstrating that the requirements of 401 KAR 5:075, Section 8 and the applicable requirements of 401 KAR 5:080 have been met. Notwithstanding this provision, the complete application for a request under Section 7(2) of this administrative regulation shall be filed 180 days before a decision is desired.

(b) For those requests for a variance from effluent limitation guidelines, the request need only comply with paragraph (a)2 of this subsection and need not be preceded by an initial request under paragraph (a)1 of this subsection.

(3) Delay in construction of POTW. An extension under CWA Section 301(i)(2) of the statutory deadlines in Section 301(b)(1)(A) or (b)(1)(C) of the CWA based on delay in completion of a POTW into which the source is to discharge shall have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under 40 CFR 122.21(n)(2) whichever is later, but not later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) [~~(3)~~] Innovative technology. An extension under Section 7(3) of this administrative regulation from the deadline in 401 KAR 5:080, Section 1, for best available technology (BAT) or for best conventional pollutant control technology (BCT), based on the use of innovative technology, shall [~~may~~] be requested no later than the close of the public comment period under 401 KAR 5:075, Section 5, for the discharger's initial permit requiring compliance with applicable effluent limitations. The request shall demonstrate that the requirements of 401 KAR 5:080 have been met.

(5) [~~(4)~~] Thermal discharges. A variance under Section 7(4) of this administrative regulation for the thermal component of a [~~any~~] discharge shall [~~must~~] be filed with a timely application for a permit under 401 KAR 5:060, except that if thermal effluent limitations are established by EPA or are based on Kentucky water quality standards the request for a variance shall [~~may~~] be filed by the close of the public comment period under 401 KAR 5:075, Section 5.

Section 4. Expedited Variance Procedures and Time Extensions. Notwithstanding the time requirements in Section 3 of this administrative regulation, the cabinet [~~director~~] may notify a permit applicant before a draft permit is issued under 401 KAR 5:075, Section 3, that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the cabinet [~~director~~] may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 401 KAR 5:080 applicable to the variance have been met. The cabinet [~~director~~] may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which shall [~~may~~] become effective upon final grant of the variance.

(2) A discharger who cannot file a complete request required under Section 3(2) of this administrative regulation may request an extension. The extension may be granted or denied by [~~at the discretion of~~] the cabinet [~~director~~]. Extensions shall [~~should~~] be no more than six (6) months in duration.

Section 5. General Permits. (1) Coverage. The cabinet shall [~~director may~~] issue a general permit in accordance with the following:

(a) Area. The general permit shall [~~will~~] be written to cover a category of discharges described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area shall [~~will~~] correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under CWA Sections 208 and 303 (33 USC Sections 1288 and 1313);

2. City, county, or state political boundaries;

3. State highway systems;

4. Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget;

5. Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census; or

6. [~~Any~~] Other appropriate division or combination of boundaries.

(b) Sources. The general permit shall [~~may~~] be written to regulate, within the area described in paragraph (a) of this subsection, either:

1. Storm-water point sources; or

2. A category of point sources other than storm-water point sources if the sources all:

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes;

c. Require the same effluent limitations or operating conditions;

d. Require the same or similar monitoring; and

e. In the opinion of the cabinet [~~director~~], are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits shall [~~may~~] be issued, modified, revoked and reissued, or revoked [~~terminated~~] in accordance with applicable requirements of 401 KAR 5:075.

(b) Requiring an individual permit.

1. The cabinet [~~director~~] may require any person authorized to discharge by a general permit to apply for and obtain an individual KPDES permit. [~~Any~~] Interested person may petition the cabinet [~~director~~] to take action under this paragraph. [~~Cases where~~] An individual KPDES permit may be required if [~~include the following~~]:

a. [~~The discharger is a significant contributor of pollution as determined by the factors set forth in 401 KAR 5:060, Section 8(3)(b);~~

~~b.~~] The discharger is not in compliance with the conditions of the general KPDES permit;

b. [c.] A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

c. [d.] Effluent limitation guidelines are promulgated for point sources covered by the general KPDES permit;

d. [e.] A Kentucky Water Quality Management Plan containing requirements applicable to these [such] point sources is approved; or

e. [f.] The requirements of subsection (1) of this section are not met.

2. An [Any] owner or operator authorized by a general permit may request to be [the] excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 401 KAR 5:060, Section 1, to the cabinet [director] with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the cabinet in accordance with 401 KAR 5:075, Section 5. The request shall be processed under 401 KAR 5:075. If the reasons cited by the owner or operator are adequate to support the request, the cabinet may issue an individual permit.

3. When an individual KPDES permit is issued to an owner or operator otherwise subject to a general KPDES permit, the applicability of the general permit to the individual KPDES permittee is automatically revoked [terminated] on the effective date of the individual permit.

4. A permittee, excluded from a general permit solely because the permittee [he] already has an individual permit, may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

Section 6. Disposal of Pollutants into Wells, into POTWs or by Land Application. (1) The cabinet may issue permits to control the disposal of pollutants into wells, when necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

(2) If [When] part of a discharger's process wastewater is not being discharged into waters of the Commonwealth because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the Commonwealth, applicable effluent standards and limitations for the discharge in a KPDES permit shall be adjusted to reflect the reduced raw waste resulting from this [such] disposal. Effluent limitations and standards in the permit shall be calculated by one (1) of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the Commonwealth, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in paragraph (a) of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater now to be treated and discharged into waters of the Commonwealth, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 401 KAR 5:080, Section 3, to make them more stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method shall [may] be algebraically expressed as:

$$P = E \times N/T$$

When P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the Commonwealth and T is the total wastewater flow.

(3) Subsection (2) of this section shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) Subsection (2) of this section does not alter a discharger's obligation to meet [any] more stringent requirements established under 401 KAR 5:065.

Section 7. Variances Available to KPDES Applicants. Consistent with KRS 224.16-050, the variance provisions in this section and in 401 KAR 5:080, Sections 3 and 4, lists, inclusively, those variances available to KPDES applicants.

(1) Economic capability. The cabinet [director], with the concurrence of EPA, may modify the BAT requirements set out in 401 KAR 5:080, Section 1, for a point source, upon a showing by the owner or operator of that point source, satisfactory to the cabinet [director] that the modified requirement will:

(a) Represent the maximum use of technology within the economic capability of the owner or operator; and

(b) Result in reasonable further progress toward the elimination of the discharge of pollutants.

(2) Environmental considerations.

(a) The cabinet [director], with the concurrence of EPA, may modify the BAT requirement set out in 401 KAR 5:080, Section 1, for a point source which does not discharge toxic pollutants identified in 401 KAR 5:080, Section 6 [5], conventional pollutants, or the thermal component of that discharge upon a showing by the owner or operator satisfactory to the cabinet [director] that:

1. The modified requirement will result, at a minimum, in compliance with the BPT requirement identified in 401 KAR 5:080 or Kentucky water quality standards, whichever is applicable;

2. The modified requirement will not result in any additional requirement on any other point or nonsource point; and

3. The modification will not:

a. Interfere with the attainment or maintenance of that water quality which will assure protection of public water supplies, protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water; and

b. Result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, including carcinogenicity, mutagenicity or teratogenicity, or synergistic propensities.

(b) If an owner or operator of a point source applies for a modification under this section for a [any] pollutant, that owner or operator shall [will] be eligible to apply for a modification under subsection (1) of this section with respect to that pollutant only during the same time period as he is eligible to apply for a modification under this section.

(3) Innovative technology.

(a) The cabinet shall [director may] establish a date for complying with the deadline for achieving BAT set out in [Section 1 of] 401 KAR 5:080, Section 1, no later than two (2) years after the date for compliance with the effluent limitation which would otherwise be applicable [July 1, 1987], if the owner or operator establishes to the satisfaction of the cabinet [director] the following:

1. That the existing production capacity of the facility will be replaced with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to that facility, and which moves toward the state's goal of eliminating the discharge of all pollutants; or

2. That an innovative control technique will be installed which has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater

effluent reduction than that required by the applicable effluent limitation, and which moves toward the state's goal of eliminating the discharge of all pollutants; or

3. That an innovative system will be installed which has the potential for significantly lower costs than the system which has been determined by the cabinet [~~director~~] to be economically achievable.

(b) The innovative system shall [~~must~~] have the potential for industry-wide application.

(c) The cabinet shall [~~director may~~] not modify any requirement under this section which applies to a pollutant on the toxic pollutant list set out at 401 KAR 5:080, Section 6 [~~5~~].

(d) The cabinet may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable compliance date is granted:

1. A requirement that the discharger report annually on the installation, operation, and maintenance costs of the innovative technology; or

2. Alternative BAT limitations that the discharger shall meet as soon as possible and not later than two (2) years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

(4) Thermal pollution.

(a) The cabinet [~~director~~] may impose an alternative effluent limitation for the thermal component of a discharge from a point source if the owner or operator can establish to the satisfaction of the cabinet [~~director~~] that the original effluent limitation proposed by the cabinet [~~director~~] is more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge will be made.

(b) The alternative effluent limitation imposed by the cabinet [~~director~~] upon request by the owner or operator shall [~~will~~] take into account the interaction of the thermal component with other pollutants, and shall [~~will~~] assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on that body of water.

~~[Section 8. Variances from Categorical Pretreatment Standards for Fundamentally Different Factors. (1) Definitions. "Requester" means an industrial user or a POTW seeking a variance from the limits specified in a categorical pretreatment standard.~~

~~(2) The criteria and standards for evaluating a request for a fundamentally different factors variance shall be pursuant to 401 KAR 5:080, Section 3.~~

~~(3) Application procedure.~~

~~(a) Application deadline.~~

~~1. Requests for a variance and supporting information must be submitted in writing to the director.~~

~~2. In order to be considered, request for variances must be submitted within 180 days after the effective date of the categorical pretreatment standard unless the user has requested a categorical determination.~~

~~3. When the user has requested a categorical determination the user may elect to await the results of the category determination before submitting a variance request under this section. When the user so elects, the user must submit the variance request within thirty (30) days after a final decision has been made on the categorical determination.~~

~~(b) Contents of submission. Written submissions for variance request shall include:~~

~~1. The name and address of the requester;~~

~~2. Identification of the interest of the requester which is affected by the categorical pretreatment standard for which the variance is requested;~~

~~3. Identification of the POTW currently receiving the waste from the industrial user for which alternative discharge limits are regulated;~~

~~4. Identification of the categorical pretreatment standards which are applicable to the industrial user;~~

~~5. A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;~~

~~6. The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified in subparagraph 5 of this paragraph;~~

~~7. A description of the industrial user's existing water pollution control facilities;~~

~~8. A schematic flow representation of the industrial user's water system including water supply, process wastewater systems, and points of discharge; and~~

~~9. A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request.~~

~~(c) Deficient requests. The director will only act on written requests for variances that contain all of the information required. Requesters who have made incomplete submissions will be notified by the director that their requests are deficient and unless the time period is extended, will be given up to thirty (30) days to correct the deficiency. If the deficiency is not corrected within the time period allowed by the director, the request for a variance shall be denied.~~

~~(d) Public notice. Upon receipt of a complete request, the director will provide notice of receipt, opportunity to review the submission, and opportunity to comment.~~

~~1. The public notice will be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice will include mailing notices to:~~

~~a. The POTW into which the industrial user discharges;~~

~~b. Adjoining states whose waters may be affected; and~~

~~c. Designated CWA Section 208 (33 USC Section 1288) planning agencies, federal and state fish, shellfish and wildlife resource agencies, and to any other person or group who has requested individual notice, including those on appropriate mailing lists.~~

~~2. The public notice will provide for a period not less than thirty (30) days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.~~

~~3. Following the comment period, the director will make a determination on the request taking into consideration any comments received. Notice of this final decision will be provided to the requester and all persons who submitted comments on the request.~~

~~(e) Review of requests by state.~~

~~1. When the director finds that fundamentally different factors do not exist, the director may deny the request, and notify the requester of the denial.~~

~~2. When the director finds that fundamentally different factors do exist the director will forward the request, with a recommendation that the request be approved, to the enforcement division director of EPA region IV.~~

~~Section 9. Pretreatment. (1) Applicability.~~

~~(a) This section applies to the following:~~

~~1. Pollutants from nondomestic sources covered by pretreatment standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;~~

~~2. POTWs which receive wastewater from sources subject to national pretreatment standards; and~~

~~3. Any new or existing source subject to national pretreatment standards.~~

~~(b) National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant.~~

~~(2) Definitions. The following definitions pertain to indirect dischargers and POTWs subject to pretreatment standards under the~~

KPDES program.

(a) "Approved POTW pretreatment program" means a program administered by a POTW that meets the criteria established in subsection (8) of this section and which has been approved by the director in accordance with subsection (9) of this section.

(b) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated by the KPDES program.

(c) "Industrial user" or "user" means a source of indirect discharge.

(d) "Interference" means an inhibition or disruption of the POTWs, its treatment processes or operations, or its sludge processes, use or disposal which is a cause of or significantly contributes to a violation of any requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or to the prevention of sewage sludge use or disposal by the POTW in violation of any applicable regulation. An industrial use significantly contributes to a permit violation or prevention of sludge use or disposal whenever the user:

1. Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by applicable law;

2. Discharges wastewater which substantially differs in nature or constituents from the user's average discharge; or

3. Knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a POTW permit violation or prevent sewage sludge use or disposal in accordance with the POTW's approved method of sludge management.

(e) "National pretreatment standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with CWA Section 307(b) and (c) (33 USC Section 1317(b) and (c)) which applies to industrial users. This includes prohibitive discharge limits established pursuant to subsection (4) of this section.

(f) "Pass through" means the discharge of pollutants through the POTW into waters of the Commonwealth in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation. An industrial user significantly contributes to such permit violation when it:

1. Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by applicable law;

2. Discharge wastewater which substantially differs in nature and constituents from the user's average discharge;

3. Knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a permit violation; or

4. Knows or has reason to know that the POTW is, for any reason, violating its final effluent limitations in its permit and that such industrial user's discharge either alone or in conjunction with discharges from other sources, increases the magnitude or duration of the POTW's violations.

(g) "POTW treatment plan" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

(h) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means except as prohibited by this section.

(i) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

(3) Local law. Nothing in this regulation is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in national pretreatment standards, or any other requirements or prohibitions established by the cabinet or by EPA.

(4) National pretreatment standards: prohibited discharges.

(a) A nondomestic source introducing pollutants into a POTW shall comply with the general and specific prohibitions set forth in 40 CFR 403.5.

(b) A POTW developing a pretreatment program pursuant to subsection (7) of this section shall develop and enforce effluent limits to implement the prohibitions of paragraph (a) of this subsection pursuant to 40 CFR 403.5.

(c) A POTW without an approved pretreatment program shall, in cases where pollutants contributed by users result in interference or pass through, and such violation is likely to recur, develop and enforcement specific effluent limits pursuant to 40 CFR 403.5.

(d) If, within thirty (30) days after notice of an interference violation has been sent by the cabinet to the POTW and to persons who have requested notice, the POTW fails to begin appropriate enforcement action, the cabinet may take appropriate enforcement action, pursuant to KRS 224.99-010 and 224.99-020.

(e) 40 CFR 403.5 is hereby incorporated by reference, revised as of July 1, 1986, as published by the Office of the Federal Register, National Archives and Register Service General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(5) Pretreatment standards: categorical standards.

(a) In addition to the general prohibitions in subsection (4) of this section, all indirect discharges shall comply with national pretreatment standards promulgated by EPA and codified in 40 CFR Chapter I, Subchapter N (Part 401 et seq.). Compliance shall be required within the time specified in the appropriate subpart of Subchapter N.

(b) Industrial users may request the director to provide written certification on whether an industrial user falls within a particular subcategory. The director will act upon that request in accordance with the procedures in 40 CFR Section 403.6.

(c) Limitations for industrial users will be imposed in accordance with 40 CFR Section 403.6(c) through (e).

(d) 40 CFR Chapter I, Subchapter N (Part 401 et seq.), and 40 CFR Section 403.6 are hereby incorporated by reference, revised as of July 1, 1986, as published by the Office of the Federal Register, National Archives and Register Service General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(6) Revision of categorical pretreatment standards to reflect POTW removal of pollutants. This subsection provides the criteria and procedures to be used by a POTW in revising the pollutant discharge limits specified in categorical pretreatment standards to reflect removal of pollutants by the POTW.

(a) Definitions. For the purpose of this subsection:

1. "Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities, or it may be incidental to the operation of the treatment system. Removal does not mean dilution of a pollutant in the POTW. The demonstration of removal shall consist of data which reflect the removal achieved by the POTW for those specific pollutants of concern included on the list developed pursuant to CWA Section 307(a) (33 USC Section 1317(a)). Each categorical pretreatment standard will specify whether or not a removal allowance may be granted for indicator or surrogate pollutants regulated in that standard.

2. "Consistent removal" means the average of the lowest fifty (50) percent of the removals measured according to paragraph (d)2 of this subsection. All sample data obtained for the measured pollutant during the time period prescribed in that paragraph shall be reported and used in computing consistent removal. If a substance is measur-

able in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and these data may be used by the POTW at its discretion and subject to approval by the director. If the substance is not measurable in the influent, the data may not be used. When the number of samples with concentrations equal to or above the limit of measurement is between eight (8) and twelve (12), the average of the lowest six (6) removals shall be used. If there are less than eight (8) samples with concentrations equal to or above the limit of measurement, the director may approve alternate means for demonstrating consistent removal.

3. "Measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

4. "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(b) Revision of categorical pretreatment standards to reflect POTW pollutant removal. A POTW receiving wastes from an industrial user to which a categorical pretreatment standard applies may, pursuant to this subsection, revise the discharge limits for a specific pollutant covered in the categorical pretreatment standard applicable to that user. Revisions shall only be made when the POTW demonstrates consistent removal of each pollutant for which the discharge limit in a categorical pretreatment standard is to be revised at a level which justifies the amount of revision to the discharge limit. In addition, revision of pollutant discharge limits in categorical pretreatment standards by a POTW may only be made as follows:

1. Application. The POTW shall apply for, and receive authorization from the director in accordance with subsections (8) and (9) of this section;

2. POTW pretreatment program. The POTW shall have a pretreatment program approved in accordance with subsections (7), (8) and (9) of this section. However, a POTW may conditionally revise the discharge limits for specific pollutants, even though a pretreatment program has not been approved, as follows. These provisions also govern the issuance of provisional authorizations under paragraph (d)2g of this subsection;

a. An industrial user wishing to receive a conditional or provisional revision of categorical pretreatment standards shall submit to the POTW the information required in subsection (10)(b)1 through 7 of this section, except that the compliance schedule is not required when a provisional allowance is requested. The submission shall indicate what additional technology, if any, will be needed to comply with the categorical pretreatment standards as revised by the POTW.

b. The POTW shall compile and submit data demonstrating removal in accordance with the requirements of paragraph (d)1 through 7 of this subsection. The POTW shall submit to the director a removal report which comports with the signatory and certification requirements of subsection (10)(l) and (m) of this section. This report shall contain a certification by any of the persons specified in subsection (10)(l) of this section or by an independent engineer, containing the following statement: "I have personally examined and am familiar with the information submitted in the attached document, and I hereby certify under penalty of law that this information was obtained in accordance with the requirements of subsection (6)(d) of this section. Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

c. The POTW shall submit to the director an application for pretreatment program approval meeting the requirements of subsections (7) and (8)(a) or (b) of this section in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's KPDES permit.

d. If a POTW grants a conditional or provisional revision and the director subsequently makes a final determination, after notice and an opportunity for a hearing, that the POTW failed to comply with the conditions in paragraphs (b)2a or b of this subsection, or that its sludge use or disposal practices are not in compliance with the provisions of paragraph (b)4 of this subsection, the revision shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standard within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standard as specified by the director. However, the revision will not be terminated when the POTW has not made a timely application for program approval if the POTW has made demonstrable progress towards and has demonstrated and continues to demonstrate an intention to submit an approvable pretreatment program as expeditiously as possible within an additional period of time, not to exceed one (1) year, established by the director.

e. If a POTW grants a conditional or provisional revision and the POTW or director subsequently makes a final determination after notice and an opportunity for a hearing, that the industrial user failed to comply with conditions in paragraph (b)1d of this subsection, including in the case of a conditional revision, the dates specified in the compliance schedule required by subsection (10)(b)7 of this section, the revision shall be terminated by the POTW or the director for the noncomplying industrial user and each noncomplying industrial user to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within the time period specified in that standard. The revision will not be terminated when a violation of the provisions of this subparagraph results from causes entirely outside the control of the industrial user or the industrial user has demonstrated substantial compliance.

f. The POTW shall submit to the director by December 31 of each year the name and address of each industrial user that has received a conditionally or provisionally revised discharge limit. If the revised discharge limit is revoked, the POTW shall submit the information in paragraph (b)2a of this subsection to the director.

3. Compensation for overflow. POTWs which at least once annually overflow untreated wastewater to receiving waters may claim consistent removal of a pollutant only by complying with either subparagraph a or b of this paragraph. However, this paragraph will not apply when an industrial user can demonstrate that overflow does not occur between the industrial user and the POTW treatment plant.

a. Consistent removal may be claimed if the industrial user provides containment or otherwise ceases or reduces discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the industrial user is connected. Discharges shall cease or be reduced, or pretreatment shall be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted when the POTW submits to the director evidence that:

(i) All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an overflow event can reasonably be expected to occur, discharges from the regulated processes which contain pollutants for which an allowance is requested;

(ii) The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW shall also demonstrate that it will monitor and verify the data required in subclause (iii) of this clause to insure that industrial users are containing, ceasing or reducing operations during POTW system overflow; and

(iii) All industrial users to which the POTW proposes to apply this

provision have demonstrated the ability and commitment to collect and make available upon request by the POTW, director, or regional administrator daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an overflow event was reasonably expected to occur; or

b.(i) Consistent removal may be claimed if reduced pursuant to the following equation:

$$r_c = r_m - \frac{8760 - Z}{8760}$$

Where:

r_m = POTW's consistent removal rate for that pollutant as established under paragraphs (d)1 and (d)2 of this subsection.

r_c = removal corrected by the overflow factor.

Z = hours per year that overflow occurred between the industrial user and the POTW treatment plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant.

(ii) After July 1, 1983, consistent removal may be claimed only when efforts to correct the conditions resulting in untreated discharges by the POTW are under way in accordance with the policy and procedures set forth in "PRM 75-34" (Program Guidance Memorandum 61) published on December 16, 1975 by EPA Office of Water Program Operations (WH-546). Revisions to discharge limits in categorical pretreatment standards may not be made when efforts have not been committed to by the POTW to minimize pollution from overflows. At a minimum, by July 1, 1983, the POTW shall have completed the analysis required by PRM 75-34 and be making an effort to implement the plan.

(iii) If, by July 1, 1983, a POTW has begun the PRM 75-34 analysis but due to circumstances beyond its control has not completed it, consistent removal, subject to the approval of the director may continue to be claimed according to the formula in subclause (i) of this clause as long as the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the nonstructural cost effective measures identified by the analysis; and as long as the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement any other cost effective overflow controls identified in the analysis should federal funds become available, so applies for such funds, and proceeds with the required construction in an expeditious manner. In addition, consistent removal may, subject to the approval of the director, continue to be claimed according to the formula in subclause (i) of this clause when the POTW has completed and the director has accepted the analysis required by PRM 75-34, and the POTW has requested inclusion in its KPDES permit of an acceptable compliance schedule providing for timely implementation of cost effective measures identified in the analysis. In considering what is timely implementation, the director will consider the availability of funds, cost of control measures, and seriousness of the water quality problem.

4. Compliance with applicable sludge requirements. A revision shall not contribute to the POTW's inability to comply with its KPDES permit or with any applicable statutes or regulations pertaining to sludge management.

(c) POTW application for authorization to revise discharge limits.

1. An application for authorization to revise discharge limits for industrial users who are or in the future may be subject to categorical pretreatment standards, or approval of discharge limits conditionally or provisionally revised for industrial users by the POTW shall be submitted by the POTW to the director.

2. A POTW may submit an application no more than once per year for:

a. Any categorical pretreatment standard promulgated in the prior eighteen (18) months;

b. Any new or modified facilities or production changes resulting in the discharge of pollutants which were not previously discharged and which are subject to promulgated categorical standards; or

c. Any significant increase in removal efficiency attributable to specific identifiable circumstances or corrective measures, such as improvements in operation and maintenance practices, new treatment or treatment capacity, or a significant change in the influent to the POTW treatment plant.

3. The director may, however, elect not to review the application upon receipt, in which case the POTW's conditionally or provisionally revised discharge limits will remain in effect until reviewed by the director. This review may occur at any time in accordance with the procedures of subsection (9) of this section, but in no event later than the time of any pretreatment program approval or any KPDES permit reissuance thereafter.

4. If the consistent removal claimed is based on an analytical technique other than the technique specified for the applicable categorical pretreatment standard, the director may require the POTW perform additional analyses.

(d) Contents of application to revise discharge limits. Requests for authorization to revise discharge limits in categorical pretreatment standards shall be supported by the following information:

1. List of pollutants. The POTW shall submit a list of pollutants for which discharge limit revisions are proposed.

2. Consistent removal data. The POTW shall submit influent and effluent operational data demonstrating consistent removal, or other information provided for in paragraph (a)2 of this subsection which demonstrates consistent removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

a. Representative data: seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

b. Representative data: quality and quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if that data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided for in paragraph (a)2 of this subsection.

c. Sampling procedures: composite.

(i) The influent and effluent operational data shall be obtained through twenty four (24) hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least twelve (12) aliquots shall be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow proportional to either stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(ii) Twelve (12) samples shall be taken at approximately equal intervals throughout one (1) full year. Sampling must be evenly distributed over the days of the week so as to include nonworkdays as well as workdays. If the director determines that this schedule will not be most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be approved.

(iii) Upon the director's concurrence, a POTW may utilize a historical data base amassed prior to the effective date of this subsection provided that such data otherwise meet the requirements of this subparagraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly, and seasonal sewage treatment plant loadings and performance for at least one (1) year.

(iv) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the director requires detention time compensation. The director may require that each effluent sample be taken approximately one (1) detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a twenty four (24) hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

d. Sampling procedures: grab. When composite sampling is not an appropriate sampling is not an appropriate sampling technique, grab samples shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one (1) detention period. The detention period is to be based on a twenty four (24) hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, when the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding fifteen (15) minutes.

e. Analytical methods. Sampling and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136. When 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or when the director, with the concurrence of the administrator, determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the director.

f. Calculation of removal. All data shall be submitted to the director. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, when such data cannot be obtained, removal may be demonstrated using other data or procedures subject to concurrence by the director.

g. Exception to sampling data requirement: Provisional removal demonstration. For pollutants which are not currently being discharged, application may be made by the POTW for provisional authorization to revise the applicable categorical pretreatment standard prior to initial discharge of the pollutant. Consistent removal may be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities when the quality and the quantity of influent are similar. In calculating and applying for provisional removal allowances, the POTW shall comply with the provision of paragraph (b)1 through 4 of this subsection. Within eighteen (18) months after the commencement of discharge of the pollutants in question, consistent removal shall be demonstrated.

3. List of industrial subcategories. The POTW shall submit a list of the industrial subcategories for which discharge limits in categorical pretreatment standards will be revised, including the number of industrial users in each subcategory and an identification of which of the pollutants on the list are discharged by each subcategory.

4. Calculation or revised discharge limits. The POTW shall submit proposed revised discharge limits for each of the subcategories of industrial users calculated in the following manner:

a. The proposed revised discharge limit for a specified pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1-r}$$

where:

x = pollutant discharge limit specified in the applicable categorical pretreatment standard.

r = POTW's consistent removal rate for that pollutant as established under paragraphs (a)2, (d)2, and if appropriate, (b)3b(i) of this subsection (percentage expressed as a decimal).

y = revised discharge limit for the specified pollutant (expressed in same units as x).

b. In calculating revised discharge limits, the revision shall be applied equally to all existing and new industrial users in an industrial subcategory subject to categorical pretreatment standards which discharge that pollutant to the POTWs.

5. Data on sludge characteristics. The POTW shall submit data showing the concentrations and amounts in the POTW's sludge of the pollutants for which discharge limit revisions are proposed and for which EPA, the director or municipality have published sludge disposal or use criteria applicable to the POTW's current method of sludge use or disposal. These data shall meet the following requirements:

a. The data shall be obtained through a composite sample taken during the same sampling periods selected to measure consistent POTW removals in accordance with the requirements of paragraph (d)2 of this subsection. Each composite sample shall contain a minimum of twelve (12) discrete samples taken at equal time intervals over a twenty four (24) hour period. When a composite sample is not an appropriate sampling technique, grab samples shall be taken.

b. Sampling and analysis shall be performed in accordance with the sampling and analytical techniques described previously in paragraph (d)2e of this subsection.

6. Description of sludge management. The POTW shall submit a specific description of the POTW's current methods of use or disposal of its sludge and data demonstrating that the current sludge use or disposal methods comply and will continue to comply with the requirements of paragraph (b)4 of this subsection.

7. Certification statement. The POTW shall submit the certification statement required by paragraph (b)2b of this subsection stating that the pollutant removals and associated revised discharged limits have been or will be calculated in accordance with this section and any guidelines issued by EPA under CWA Section 304(g) (33 USC Section 1314(g)).

(c) Procedure for authorizing modification of standards.

1. Application for authorization to revise national pretreatment standards shall comply with subsection (8) of this section and paragraphs (c) and (d) of this subsection. Notice, public comment, and review by the director will comply with subsection (9) of this section.

2. A POTW which has received a construction grant from funds authorized for any fiscal year beginning after September 30, 1978, will only be considered for authorization to modify national standards after it has completed the analysis required by CWA Section 201(g)(5) (33 USC Section 1288(g)(5)) and demonstrated that modification of the discharge limits in national standards will not preclude the use of innovative or alternative technology. In addition, when sludge disposal or treatment technology is or will be acquired or constructed with construction grant funds, POTWs should refer to 40 CFR Section 35.917(d)(6) and Appendix A to determine the funding eligibility of sludge disposal or treatment facilities.

3. The director shall, at such time as it elects to review the submission, or at the time of POTW pretreatment program approval or KPDES permit reissuance thereafter, authorize the POTW to revise industrial user discharge limits, consistent with the provisions of this section.

4. An industrial user or other interested party may assist the POTW in preparing and presenting the information necessary to apply

for authorization to revise categorical pretreatment standards.

(f) Continuation and withdrawal of authorization.

1. Monitoring and reporting of consistent removal. Following authorization to revise the discharge limits in pretreatment standards, the POTW shall continue to monitor and report on, at frequencies and over intervals specified by the director, with the concurrence of the regional administrator, but in no case less than two (2) times per year, the POTW's removal capabilities for all pollutants for which authority to revise the standards was granted. Monitoring and reporting shall be in accordance with subsection (10)(i) and (j) of this section pertaining to pollutant removal capability reports.

2. Reevaluation of revisions. Approval of authority to revise pretreatment standards will be reexamined whenever the POTW's KPDES permit is reissued, unless the director, with the concurrence of the regional administrator determines the need to reevaluate the authority. In order to maintain a removal allowance, the POTW shall comply with all federal, state, and local statutes, regulations, and permits applicable to the POTW's selected method of sludge use or disposal. In addition, where overflows of untreated waste by the POTW continue to occur, the director, with the concurrence of the regional administrator, may condition continued authorization to revise discharge limits upon the POTW's performing additional analysis and/or implementing additional control measures as is consistent with EPA policy on POTW overflows.

3. Inclusion in POTW permit. Once authority to revise discharge limits for a specified pollutant is granted, the revised discharge limits for industrial users of the system as well as the consistent removal documented by the POTW for that pollutant and the other requirements of paragraph (b) of this subsection, shall be included in the POTW's KPDES permit upon the earliest reissuance or modification, at or following program approval, and shall become enforceable requirements of the POTW's KPDES permit.

4. Modification or withdrawal of revised limits.

a. Notice to POTW. The director shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)1 of this subsection or other information available to it, the director determines:

(i) That one (1) or more of the discharge limit revisions made by the POTW, or the POTW itself, no longer meets the requirements of this subsection; or

(ii) That such discharge limit revisions are causing or significantly contributing to a violation of any conditions or limits contained in the POTW's KPDES permit. A revised discharge limit is significantly contributing to a violation of the POTW's permit if it satisfies the definitions set forth in subsection (2)(d) or (f) of this section.

b. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed sixty (60) days unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the director shall either withdraw such discharge limits or require modifications in the revised discharge limits.

c. Public notice of withdrawal or modification. The director will not withdraw or modify revised discharge limits unless the director shall first have notified the POTW and all industrial users to whom revised discharge limits have been applied and made public in writing, the reasons for withdrawal or modification, and an opportunity is provided for a hearing. Following notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with those limits within a reasonable time not to exceed the period of time prescribed in the applicable categorical pretreatment standard as may be specified by the director.

(7) POTW pretreatment programs: development by POTW.

(a) POTWs required to develop a pretreatment program. Any POTW, or combination of POTWs operated by the same authority, with a total design flow greater than 5 million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall be required to establish a POTW pretreatment program. The director may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances so warrant. In addition, a POTW desiring to modify categorical pretreatment standards for pollutants removed by the POTW pursuant to subsection (6) of this section shall have an approved pretreatment program prior to obtaining final approval of a removal allowance, unless conditional approval of a removal allowance is granted by the director pursuant to subsection (6) of this section.

(b) Deadline for program approval. A POTW which meets the criteria of this subsection will receive approval of a POTW pretreatment program no later than three (3) years after the reissuance or modification of its existing permit but in no case later than July 1, 1983.

(c) Incorporation of approved programs in permits. A POTW may develop an approvable POTW pretreatment program any time before the time limit set forth in paragraph (b) of this subsection. The POTW's KPDES permit will be reissued or modified to incorporate the approved program conditions as enforceable conditions of the permit.

(d) Incorporation of compliance schedules in permits. If the POTW does not have an approved pretreatment program at the time the POTW's existing permit is reissued or modified, the reissued or modified permit will contain the shortest reasonable compliance schedule, not to exceed three (3) years or July 1, 1983, whichever is sooner, for the approval of the legal authority, procedures and funding required by paragraph (f) of this subsection.

(e) Cause for reissuance or modification of permits. The director may modify or revoke and reissue a POTW's permit in order to:

1. Put the POTW on a compliance schedule for the development of a POTW pretreatment program when the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

2. Coordinate the issuance of a CWA Section 201 (33 USC Section 1281) construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

3. Incorporate an approved POTW pretreatment program in the POTW permit; or

4. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(f) POTW pretreatment program requirements. A POTW pretreatment program shall meet the following requirements:

1. Legal authority. The POTW shall operate pursuant to enforceable legal authority, which authorizes or enables the POTW to apply and to enforce the requirements of this section. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by law. At a minimum, this legal authority shall enable the POTW to:

a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users when such contributions do not meet applicable pretreatment standards and requirements or when such contributions would cause the POTW to violate its permit;

b. Require compliance with applicable pretreatment standards and requirements by industrial users;

c. Control, through permit, contract, order or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements;

d. Require the development of a compliance schedule by each

industrial user for the installation of technology required to meet applicable pretreatment standards and requirements, including but not limited to the reports required in subsection (10) of this section;

e. Require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements;

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under subsection (12) of this section to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under CWA Section 308 (33 USC Section 1318);

g. Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. A POTW shall seek and assess civil and criminal penalties, as authorized by law. A POTW may enter into contracts with industrial users to assure compliance by industrial users with pretreatment standards and requirements. A contract may provide for liquidated damages for violation of pretreatment standards and requirements and may include an agreement by the industrial user to submit to the remedy of specific performance for breach of contract;

h. Pretreatment requirements enforced through the remedies set forth in subparagraph g of this paragraph shall include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; or any reporting requirements imposed by the POTW or this section. The POTW shall have authority and procedures to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedure to halt or prevent any discharge to the POTW which presents or may present danger to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek enforcement for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the director finds to be insufficient; and

i. Comply with the confidentiality requirements set forth in subsection (11) of this section.

2. Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

a. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index, or inventory of industrial users made under this paragraph shall be made available to the director upon request;

b. Identify the character and volume of pollutants contributed to the POTW by the industrial user identified under clause a of this subparagraph. This information shall be made available to the director upon request;

c. Notify industrial users identified under clause a of this subparagraph of applicable pretreatment standards and any other applicable requirements;

d. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements of subsection (10) of this section;

e. Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. The results of these activities shall be made available to the director upon request;

f. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by subsection (10) of this section, or indicate by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

g. Comply with all applicable public participation requirements. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, during the previous twelve (12) months, were significantly violating applicable pretreatment standards or other pretreatment requirements. For the purposes of this provision, a significant violation is a violation which remains uncorrected forty five (45) days after notification of noncompliance; which is part of a pattern of noncompliance over a twelve (12) month period; which involves a failure to accurately report noncompliance; or which resulted in the POTW exercising its emergency authority.

3. Funding. The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel may be delayed by the director when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

(8) POTW pretreatment programs and authorization to revise pretreatment standards: submission for approval.

(a) Who approves program. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in paragraph (b)1 through 4 of this subsection. This description shall be submitted to the director, who will make a determination on the request for program approval in accordance with procedure described in subsection (9) of this section.

(b) Contents of POTW program submission.

1. The program submission shall contain a statement from the city attorney or a city official acting in a comparable capacity, or the attorney for those POTWs which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in subsection (7) of this section. This statement shall:

a. Identify the provision of the legal authority under subsection (7)(f)1 of this section which provides the basis for each procedure under subsection (7)(f)2 of this section;

b. Identify the manner in which the POTW will implement the program requirements set forth in subsection (7) of this section including the means by which pretreatment standards will be applied to individual industrial users; and

c. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

2. The program submission shall contain a copy of any statutes, ordinances, regulations, contracts, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

3. The program submission shall contain a brief description, including organization charts of the POTW organization which will administer the pretreatment program. If more than one (1) agency is responsible for administration of the program the responsible agencies shall be identified, their respective responsibilities delineated and their procedures for coordination set forth.

4. The program description shall contain a description of the funding levels and full and part time manpower available to implement

~~the program.~~

~~(c) Conditional POTW program approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements of paragraph (b) of this subsection except that the requirements of paragraph (b) of this subsection may be relaxed if the submission demonstrates that:~~

~~1. A limited aspect of the program does not need to be implemented immediately;~~

~~2. The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and~~

~~3. Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the director will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.~~

~~(d) Content of removal allowance submission. The request for authority to revise categorical pretreatment standards shall contain the information required in subsection (6)(d) of this section.~~

~~(e) Approval authority action. A POTW requesting POTW pretreatment program approval shall submit to the director three (3) copies of the submission described in paragraph (b) of this subsection. Upon a preliminary determination that the submission meets the requirements of paragraph (b) of this subsection the director will:~~

~~1. Notify the POTW that the submission has been received and is under review; and~~

~~2. Commence the public notice and evaluation activities set forth in subsection (9) of this section.~~

~~(f) Notification where submission is defective. If after review of the submission as provided for in paragraph (e) of this subsection, the director determines that the submission does not comply with the requirements of paragraphs (b) or (c) and, if appropriate, (d) of this subsection, the director will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification will identify any defects in the submission and advise of the means by which the POTW can comply with the applicable requirements of paragraphs (b) and (c) and, if appropriate, (d) of this subsection.~~

~~(g) Consistency with water quality management plans.~~

~~1. In order to be approved, the POTW pretreatment program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130 and 131, when the CWA Section 208 (33 USC Section 1288) plan includes management agency designations and addresses pretreatment in a manner consistent with this section. In order to assure such consistency the director will solicit the review and comment of the appropriate CWA Section 208 (33 USC Section 1288) planning agency during the public comment period provided for in subsection (9) of this section prior to approval or disapproval of the program.~~

~~2. When no 208 plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address pretreatment in a manner consistent with this section, the director will solicit the review and comment of the appropriate 208 planning agency.~~

~~(9) Approval procedures for POTW pretreatment programs and POTW revision of categorical pretreatment standards. The following procedure will be adopted in approving or denying requests for approval of POTW pretreatment programs and revising categorical pretreatment standards:~~

~~(a) Deadline for review of submission. The director will have ninety (90) days from the date of public notice of a submission complying with the requirements of subsection (8) of this section, or if a removal allowance is sought with the requirements of subsection (6) of this section, to review the submission. The director will review the submission to determine compliance with the requirements of subsection (8) of this section, and when a removal allowance is sought, with subsection (6) of this section. The director may have up to an additional ninety (90) days to complete the evaluation of the submission if the public comment period provided for in paragraph (b)1a of this subsection is extended beyond thirty (30) days or if a public hearing is held as provided for in paragraph (b)2 of this subsection. In no event, however, will the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission.~~

~~(b) Public notice and opportunity for hearing. Upon receipt of a submission the director will commence its review. Within five (5) days after making a determination that a submission meets the requirements of subsection (8)(b) of this section, and when a removal allowance is sought with subsections (6)(d) and (8)(d) of this section, the director will:~~

~~1. Issue a public notice of request for approval of the submission:~~

~~a. This public notice will be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice will include mailing notices of the request for approval of the submission to designated CWA Section 208 (33 USC Section 1288) planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.~~

~~b. The public notice will provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the submission.~~

~~c. All written comments submitted during the thirty (30) day comment period will be retained by the director and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the director.~~

~~2. The director will also provide an opportunity for the applicant, any affected state, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.~~

~~a. This request for public hearing shall be filed within the thirty (30) day or extended comment period described in paragraph (b)1b of this subsection and will indicate the interest of the person filing such request and the reasons why a hearing is warranted.~~

~~b. The director will hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved.~~

~~c. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and the right to participate will be published in the same newspaper as the notice of the original request. In addition notice of the hearing will be sent to those persons requesting individual notice.~~

~~3. When the director elects to defer review of a submission which authorizes a POTW to grant conditional revised discharge limits, the director will publish public notice of the election, pursuant to paragraph (b)1 of this subsection.~~

~~(c) Director's decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in paragraph (a) of this subsection, the director will approve or deny the submission based upon the evaluation in paragraph (a) of this subsection and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. When the director makes a determination to deny the request, the director will so notify the POTW and each person who has requested individual notice. This notification will~~

include suggested modification and the director may allow the requester additional time to bring the submission into compliance with applicable requirements.

(d) EPA objection to director's decision. No POTW pretreatment program will be approved by the director if following the thirty (30) day or extended evaluation period provided for in paragraph (b)1b of this subsection and any hearing held pursuant to paragraph (b)2 of this subsection, the regional administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the regional administrator's objections will be provided to the applicant, and each person who has requested individual notice.

(e) Notice of decision. The director will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the director will cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The director will identify any authorization to modify categorical pretreatment standards by the POTW for removal of pollutants subject to the pretreatment standards.

(f) Public access to submission. The director will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

(10) Reporting requirements for POTWs and industrial users.

(a) Definition. "Control authority" as it is used in this subsection means the POTW if the POTW's submission for its pretreatment program has been approved or the director if the submission has not been approved.

(b) Reporting requirement for industrial users upon effective date of categorical pretreatment standards—baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under subsection (5)(a)4 of this section, whichever is later, existing industrial users subject to categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the control authority a report which contains the information listed in subparagraphs 1 through 7 of this paragraph. When reports containing this information already have been submitted to the director in compliance with the requirements of 40 CFR Section 128.140(b), the industrial user will not be required to submit this information again. New sources shall be required to submit to the control authority a report which contains the information listed in subparagraphs (1) through (5) of this paragraph:

1. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owner.

2. Permits. The user shall submit a list of any environmental control permits held by or for the facility.

3. Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation carried out by the industrial user. This description may include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

4. Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow in gallons per day to the POTW from regulated process streams. The control authority may allow for verifiable estimates of these flows when justified by cost or feasibility considerations.

5. Measurement of pollutants.

a. The user shall identify the pretreatment standards applicable to each regulated process;

b. The user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the control authority. Both daily maximum and average concentration, or mass, where required shall be reported. The sample shall be representative of daily operations;

c. When feasible samples must be obtained through the flow-proportional composite sampling techniques specified in the applicable categorical pretreatment standard. When composite sampling is not feasible, a grab sample is acceptable;

d. When the flow of the stream being sampled is less than or equal to 950,000 liters/day (approximately 250,000 gpd) the user shall take three (3) samples within a two (2) week period. When the flow of the stream being sampled is greater than 950,000 liters/day, the user shall take six (6) samples within a two (2) week period;

e. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of subsection (5) of this section in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula of subsection (5) of this section, this adjusted limit along with supporting data shall be submitted to the control authority;

f. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136. When 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or when the director determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods, or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the director;

g. The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

h. The baseline report shall indicate the time, date, and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

6. Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified to be a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

7. Compliance schedule. If additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, the user shall submit the shortest schedule by which the industrial user will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

a. When the industrial user's categorical pretreatment standard has been modified by a removal allowance under subsection (6) of this section, or by a fundamentally different factors variance under Section 8 of this regulation, at the time the user submits the report required by paragraph (b) of this subsection, the information required by paragraph (b)6 and 7 of this subsection shall pertain to the modified limits.

b. If the categorical pretreatment standard is modified by a removal allowance under subsection (6) of this section or by a fundamentally different factors variance under Section 8 of this regulation, after the user submits the report required by paragraph (b) of this subsection, any necessary amendments to the information requested by paragraph (b)6 and 7 of this subsection shall be submitted by the user to the control authority within sixty (60) days after the modified limit is approved.

(c) Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by paragraph (b)7 of this subsection:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards.

2. No increment referred to in paragraph (c)1 of this subsection shall exceed nine (9) months.

3. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the control authority.

(d) Report on compliance with categorical pretreatment standard deadline. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the industrial user which are limited by such pretreatment standards and requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the industrial user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user and certified by a qualified professional.

(e) Periodic reports on continued compliance.

1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of that pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in paragraph (b)4 of this subsection except that the control authority may require more detailed reporting of flows. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted.

2. When the control authority has imposed mass limitations on industrial users as provided by subsection (5)(c) of this section, the report required by paragraph (e)1 of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(f) Notice of slug loading. The industrial user shall notify the POTW immediately of any slug loading, as defined by subsection (4)(a) of this section by the industrial user.

(g) Monitoring and analysis to demonstrate continued compliance. The reports required in paragraphs (b)5, (d), and (e) of this subsection shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. All sampling and analyses shall be performed in accordance with procedures established by the administrator pursuant to CWA Section 304(g) (33 USC Section 1314(g)), and set forth in 40 CFR Part 136. If 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or if the director determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties and approved by the director.

(h) Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program.

2. No increment referred to in paragraph (h)1 of this subsection shall exceed nine (9) months.

3. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the director.

(i) Initial POTW report on compliance with approved removal allowance. A POTW which has received authorization to modify categorical pretreatment standards for pollutants removed by the POTW in accordance with the requirements of subsection (6) of this section shall submit to the director within sixty (60) days after the effective date of a pretreatment standard for which authorization to modify has been approved, a report which contains all information required by subsection (6) of this section. A minimum of one (1) sample per month during the reporting period is required.

(j) Periodic reports by POTW to demonstrate continued compliance with removal allowance. The reports referred to in paragraph (i) of this subsection shall be submitted to the approval authority at six (6) month intervals beginning with the submission of the initial report referred to in paragraph (i) of this subsection unless required more frequently by the director.

(k) Signatory requirements for industrial user reports. The reports required by paragraphs (b), (d), and (e) of this section shall be signed by an authorized representative of the industrial user. An authorized representative may be:

1. A principal executive officer of at least the level of vice president, if the industrial user is a corporation.

2. A general partner or proprietor if the industrial user is a partnership or sole proprietorship respectively.

3. A duly authorized representative of the individual designated in subparagraph 1 or 2 of this paragraph if such representative is responsible for the overall operation of the facility from which the indirect discharge originates.

(l) Signatory requirements for POTW reports. Reports submitted to the approval authority by the POTW in accordance with paragraphs (h), (i), and (j) of this subsection shall be signed by a principal executive officer, ranking elected official, or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(m) Provisions governing fraud and false statements. The reports required by paragraphs (b), (d), (e), (h), (i), and (j) of this subsection shall be subject to KRS 224.99-010(4) and all other state and federal laws pertaining to fraud and false statements.

~~(n) Recordkeeping requirements.~~

~~1. Any industrial user and POTW subject to the reporting requirements established in this subsection shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:~~

~~a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;~~

~~b. The dates analyses were performed;~~

~~c. Who performed the analyses;~~

~~d. The analytical techniques or methods used; and~~

~~e. The results of the analyses.~~

~~2. Any industrial user or POTW subject to these reporting requirements shall be required to retain for a minimum of three (3) years any records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by the director, and by the POTW in the case of an industrial user. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director.~~

~~3. A POTW to which reports are submitted by an industrial user pursuant to paragraphs (b), (d), and (e) of this subsection shall retain such reports for a minimum of three (3) years and shall make such reports available for inspection and copying by the director. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the director.~~

~~(11) Confidentiality. Any information submitted to the director in accordance with this section may be claimed confidential, as provided in 401 KAR 5:060, Section 2, except that effluent data provided to the director pursuant to this section shall be available to the public without restriction.~~

~~(12) Net/gross limitations. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with 40 CFR Section 403.15. 40 CFR Section 403.15 is hereby incorporated by reference, revised as of July 1, 1986, as published by the Office of the Federal Register, National Archives and Register Service, General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~

~~(13) Upset provision.~~

~~(a) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.~~

~~(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (c) of this subsection are met.~~

~~(c) Conditions necessary for a demonstration of upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:~~

~~1. An upset occurred and the industrial user can identify the specific cause of the upset;~~

~~2. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;~~

~~3. The industrial user has submitted the following information to the POTW and control authority within twenty four (24) hours of becoming aware of the upset or if this information is provided orally, a written submission within five (5) days:~~

~~a. A description of the indirect discharge and cause of noncompliance;~~

~~b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;~~

~~c. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.~~

~~(d) Burden of proof. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.~~

~~(e) Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, cabinet enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review under KRS 224.10-420(2). Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.~~

~~(f) User responsibility in case of upset. The industrial user shall control production or discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.]~~

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this amended regulation has been scheduled for June 28, 1994, at 10 a.m. (eastern time), in the Auditorium of the State Office Building at Mero and High Streets in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by June 23, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard 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 amended regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of business (4:30 p.m., eastern time) on June 28, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before June 23, 1994 between 8:00 a.m. and 4:30 p.m. (eastern time).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 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 regulation sets forth the scope and applicability of the Kentucky Pollutant Discharge Elimination System (KPDES) permit program. This regulation affects all wastewater dischargers in the Commonwealth, which represents

over 9300 facilities. The proposed changes to this regulation are for the following reasons: Section 3 changes are due to January 4, 1989, federal regulations (40 CFR 122.21) which concern variance requests by nonpublicly owned treatment plants. Section 5 changes are due to January 4, 1989, and November 16, 1990, federal regulations (40 CFR 122.28). This section deals with general permits. Section 7 changes are due to January 4, 1989, federal regulations (40 CFR 125.23 and 125.24) which relate to variance requests by any KPDES applicant. Sections 8 and 9 are being deleted to be placed into a new regulation (401 KAR 5:057) which addresses pretreatment. All other changes are to correct cross-references or to update to KRS Chapter 13A requirements.

(a) Direct and indirect costs or savings to those affected: None. Any direct or indirect costs or savings would have occurred when the applicable federal regulations went into effect. This is because KPDES is a delegated federal permit program subject to federal requirements which is administered by the state of Kentucky.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There are no competitive impacts between states, because the federal regulations are applied nationwide.

(b) Reporting and paperwork requirements: None. Any change in reporting or paperwork would have occurred when the applicable federal regulations took effect.

(2) Effects on the promulgating administrative body: None. Any effects on the agency would have occurred when the federal regulations became effective.

(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. These changes will not impact state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Kentucky's KPDES delegation authority prohibits the use of provisions less stringent than what would be imposed by the federal agency. These regulations adopt the federal standards.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administration regulation or government policy conflicts, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No regulation conflicts.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: These changes are being made to address modifications to the federal regulations which need to be incorporated into state regulations. This is necessary to maintain delegation of the NPDES permit program.

TIERING: Was tiering applied? Yes. To the extent that the original federal regulation changes provided for tiering, these administrative regulation changes are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

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 regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to any local government unit which operates facilities that discharge to waters of the Commonwealth.

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. None, because any impact on the expenditures and revenues of a local government would have occurred when the applicable federal regulation took effect. This may have led local governments to take actions (increase taxes or increase fees) to comply with the new federal regulations.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate on Kentucky to adopt this regulation. For Kentucky to maintain its delegation of authority over NPDES these amendments are being made. This involves the following federal regulations: 40 CFR 122.21, 122.28, 125.23 and 125.24.

2. State compliance standards. The following parts of this regulation are being modified to match the referenced federal requirements: Section 3 (variance requests by nonpublicly owned treatment works), Section 5 (general permits) and Section 7 (variance requests by any permit applicant).

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards being proposed for this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 further empowers the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251 et seq.) subject to the conditions imposed in 33 USC Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This administrative regulation sets forth the application requirements for all KPDES permits and contains additional requirements for general and specific categories of dischargers.

Section 1. Applying for a KPDES Permit. (1) Application requirements. [~~(a)~~] Any person who is required to have a permit, including new applicants and permittees with expiring permits, shall complete, sign, and submit an application to the cabinet [~~director~~] as described

in this administrative regulation and 401 KAR 5:055. On the date of KPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a KPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR Section 122.6, continuation of expiring permits. For the purpose of this section, the cabinet shall [~~director will~~] accept the information required under subsection (7) [(~~4~~)] of this section, for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(2) Duty to apply.

(a) Any person who discharges or proposes to discharge pollutants or who owns and who does not have an effective permit, except persons covered by general permits under 401 KAR 5:055, Section 5, excluded under 401 KAR 5:055, Section 1(2), or a user of a privately owned treatment works unless the cabinet requires otherwise under 401 KAR 5:065, Section 2(12), shall submit a complete application, which shall include a BMP program if necessary under 401 KAR 5:065, Section 2(10) to the cabinet in accordance with this section.

(b) The appropriate application forms for the various discharger types are given below. The forms are incorporated by reference in Section 14 of this administrative regulation.

DISCHARGE TYPE	APPLICATION FORMS
POTWs	1 and A
Concentrated animal feeding operations and aquatic animal production facilities	1 and B
Manufacturing, commercial, mining and silvicultural discharges with process wastewater	1 and C
Manufacturing, commercial, mining and silvicultural discharges with nonprocess wastewater only	1 and Short C
Industrial storm water point source discharges	1 and F

(3) When a facility or activity is owned by one (1) person but is operated by another person, the operator shall obtain a permit.

(4) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the cabinet. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Storm water discharges associated with construction activity shall submit applications at least ninety (90) days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the ninety (90) or 180 day requirements to avoid delay.

(5) Duty to reapply.

(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the cabinet. The cabinet shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that the cabinet may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.

(c) Continuation of expiring permits.

1. The conditions of an expired permit continue in force until the effective date of a new permit if:

a. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

b. The cabinet, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

2. Effect. Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

3. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the cabinet may to do any of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under 401 KAR 5:075, Section 3(2);

c. Issue a new permit under 401 KAR 5:075 with appropriate conditions; or

d. Take other actions authorized by the KRS Chapter 224 and these administrative regulations.

(6) Completeness. The cabinet shall not issue a permit before receiving a complete application for a permit except for KPDES general permits. An application for a permit is complete when the cabinet receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

(7) Information requirements. All applicants for KPDES permits shall provide the following information to the cabinet, using the application form provided by the cabinet. Additional information required of applicants is set forth in Sections 2 through 5 of this administrative regulation.

(a) The activities conducted by the applicant which require it to obtain an KPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) Up to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The owner's or operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(e) A listing of all existing environmental permits.

(f) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(g) A brief description of the nature of the business.

(8) KPDES permit fees. As provided for in KRS 224.70-120, KPDES applications shall include a filing fee of twenty (20) percent of the total fee applicable to the following categories:

(a) Major industry;
(b) Minor industry;
(c) Nonprocess industry;
(d) Large, nonpublicly-owned treatment works;
(e) Intermediate, nonpublicly-owned treatment works;
(f) Small, nonpublicly-owned treatment works;
(g) Agriculture; and
(h) Surface mining operation.

Section 2. Application Requirements for Manufacturing, Commer-

cial, Mining, and Silvicultural Dischargers. Manufacturing, commercial, mining, and silvicultural dischargers applying for KPDES permits, except for those facilities subject to the requirements of Section 3 of this administrative regulation, shall provide the following information to the cabinet, using the appropriate application forms as specified in Section 1 of this administrative regulation.

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subsection (3) of this section. The water balance shall provide approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor or distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation shall be indicated.

(4) Intermittent flows. If any of the discharges described in subsection (3) of this section are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage or leaks.

(5) Maximum production. If an effluent guideline promulgated under Section 304 of CWA applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure shall reflect the actual production of the facility as required by 401 KAR 5:065, Section 3(2).

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection, except information on storm water discharges which is to be provided as specified in Section 12 of this administrative regulation.

(a) When quantitative data for a pollutant are required, the applicant shall collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but shall provide a description of the method. When an applicant has two (2) or more outfalls with substantially identical effluents, the cabinet may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (f) and (g) of this subsection that an applicant shall provide quantitative data for certain pollutants known to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report these pollutants as present. Grab samples shall be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, twenty-four (24) hour composite samples shall be used. However, a minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours. In addition, for discharges other than storm water discharges, the cabinet may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is not feasible and that the minimum of four (4) grab samples shall be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than one-tenth (0.1) inch and at least seventy-two (72) hours from the previously measurable (greater than one-tenth (0.1) inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty (50) percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three (3) hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. Applicants submitting permit applications for storm water discharges under Section 12(3) of this administrative regulation may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the cabinet. However, a minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours. For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data shall be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Section 12(2)(a) of this administrative regulation. For all storm water permit applicants taking flow-weighted composites, quantitative data shall be reported for all pollutants specified in Section 12 of this administrative regulation except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The cabinet may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. An applicant knows or has reason to know that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.

(b)1. Every applicant shall report quantitative data for every outfall for the following pollutants:

Biochemical oxygen demand (BOD)
Chemical oxygen demand
Total organic carbon
Total suspended solids
Ammonia, as N
Temperature both winter and summer
pH

2. The cabinet may waive the reporting requirements for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in subparagraph 1 of this paragraph if the

applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(c) Each applicant with processes in one (1) or more of the following primary industry categories contributing to a discharge shall report quantitative data for the following pollutants in each outfall containing process wastewater:

1. Adhesives and sealants.
2. Aluminum forming.
3. Auto and other laundries.
4. Battery manufacturing.
5. Coal mining.
6. Coil coating.
7. Copper forming.
8. Electrical and electronic components.
9. Electroplating.
10. Explosives manufacturing.
11. Foundries.
12. Gum and wood chemicals.
13. Inorganic chemicals manufacturing.
14. Iron and steel manufacturing.
15. Leather tanning and finishing.
16. Mechanical products manufacturing.
17. Nonferrous metals manufacturing.
18. Ore mining.
19. Organic chemicals manufacturing.
20. Paint and ink formulation.
21. Pesticides.
22. Petroleum refining.
23. Pharmaceutical preparations.
24. Photographic equipment and supplies.
25. Plastics processing.
26. Plastic and synthetic materials manufacturing.
27. Porcelain enameling.
28. Printing and publishing.
29. Pulp and paper mills.
30. Rubber processing.
31. Soap and detergent manufacturing.
32. Steam electric power plants.
33. Textile mills.
34. Timber products processing.

(d) Analytical results for the organic toxic pollutants in the fractions designated in Section 8(1) of this administrative regulation for the applicant's industrial category or categories shall be provided unless the applicant qualifies as a small business under subsection (8) of this section. Section 8(2) of this administrative regulation lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography and mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

(e) Analytical results for the pollutants listed in Section 8(3) of this administrative regulation (the toxic metals, cyanide, and total phenols) shall be provided.

(f)1. Each applicant shall indicate whether it knows or has reason to know that any of the pollutants in Section 8(4) of this administrative regulation (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant shall report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant shall either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant shall indicate whether it knows or has reason to know that any of the pollutants listed in Section 8(2) or (3) of this administrative regulation (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b) of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of ten (10) ppb or greater the applicant shall report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four (4) pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant shall report quantitative data. For every pollutant expected to be discharged in concentrations less than ten (10) ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant shall either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subsection (8) of this section is not required to analyze for pollutants listed in Section 8(2) of this administrative regulation (the organic toxic pollutants).

(g) Each applicant shall indicate whether it knows or has reason to know that any of the pollutants in Section 8(5) of this administrative regulation (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(h) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to know that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one (1) of the following criteria is exempt from the requirements in subsection (7)(b)1 or (7)(c)1 of this section to submit quantitative data for the pollutants listed in Section 8(2) of this administrative regulation (the organic toxic pollutants):

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).

(9) Used or manufactured toxics. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct shall be provided. The cabinet may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the cabinet has adequate information to issue the permit.

(10) Biological toxicity tests. An identification of any biological toxicity tests which the applicant knows or has reason to know have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge shall be provided.

(11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by subsection (7) of this section, the identity of each laboratory or firm and the analyses performed shall be provided.

(12) Additional information. In addition to the information reported on the application form, applicants shall provide to the cabinet, at its request, such other information as the cabinet may reasonably require to assess the discharges of the facility and to determine whether to issue a KPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

Section 3. Application Requirements for Manufacturing, Commercial, Mining and Silvicultural Facilities which Discharge Only Nonprocess Wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for KPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the cabinet, using application forms provided by the cabinet:

(1) Outfall location. Outfall number, latitude and longitude to the nearest fifteen (15) seconds, and the name of the receiving water.

(2) Discharge date for new dischargers. Date of expected commencement of discharge.

(3) Type of waste. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available.

(4) Effluent characteristics.

(a) The applicant shall provide quantitative data for the pollutants or parameters listed below, unless testing is waived by the cabinet. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and shall include maximum daily value, average daily value, and number of measurements taken. The applicant shall collect and analyze samples in accordance with 40 CFR Part 136. Grab samples shall be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, twenty-four (24) hour composite samples shall be used. New dischargers shall include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels shall be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

1. Biochemical oxygen demand (BOD).
2. Total suspended solids (TSS).
3. Fecal coliform, if known to be present or if sanitary waste is or will be discharged.
4. Total residual chlorine, if chlorine is used.
5. Oil and grease.
6. Chemical oxygen demand (COD), if noncontact cooling water is or will be discharged.
7. Total organic carbon (TOC), if noncontact cooling water is or will be discharged.
8. Ammonia, as N.
9. Discharge Flow.
10. pH.
11. Temperature, winter and summer.

(b) The cabinet may waive the testing and reporting requirements for any of the pollutants or flow listed in paragraph (a) of this subsection if the applicant submits a request for such a waiver before or with the application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

(c) The requirements of paragraph (a) of this subsection that an applicant shall provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant shall report these pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 401 KAR 5:065, Section 3(7) are met.

(5) Flow. A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills.

(6) Treatment system. A brief description of any system used or to be used.

(7) Optional information. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 401 KAR 5:065, Section 3(7).

(8) Certification. Signature of certifying official under Section 9 of this administrative regulation.

Section 4. Application Requirements for Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities. Concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the cabinet, using the applicable application form provided by the cabinet:

(1) For concentrated animal feeding operations:

(a) The type and number of animals in open confinement and housed under roof.

(b) The number of acres used for confinement feeding.

(c) The design basis for the runoff diversion and control system, if one (1) exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(2) For concentrated aquatic animal production facilities:

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of food fed during that month.

Section 5. Application Requirements for New and Existing POTWs. (1) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the cabinet:

(a) All POTWs with design influent flows equal to or greater than 1,000,000 gallons per day; and

(b) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(2) In addition to the POTWs listed in subsection (1) of this section, the cabinet may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment facility, and types of industrial contributors;

(b) The seven (7) day, ten (10) year ($7Q_{10}$) low flow value of the receiving stream;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the water body segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(e) Other considerations, including but not limited to the history of toxic impact and compliance problems at the POTW, which the cabinet determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under subsection (1) or (2) of this section to conduct toxicity testing, POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. This testing shall have been conducted since the last KPDES permit reissuance or permit modification under 401 KAR 5:070, Section 6, whichever occurred later.

(4) All POTWs with approved pretreatment programs shall provide a written technical evaluation of the need to revise local limits under 401 KAR 5:057.

Section 6. Recordkeeping. Applicants shall keep records of all

data used to complete permit applications and any supplemental information submitted under this section for a period of at least three (3) years from the date the application is signed.

Section 7. Service of Process. Every applicant and permittee shall provide the cabinet an address for receipt of any legal document for service of process. The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet may tender any legal notice including but not limited to service of process in connection with any enforcement action.

Section 8. KPDES Application Testing Requirements. (1) Table I.

Industrial category	GC-MS Fraction*			
	Volatile	Acid	Neutral	Pesticide
Adhesives & sealants	(1)	(1)	(1)	
Aluminum forming	(1)	(1)	(1)	
Auto & other laundries	(1)	(1)	(1)	(1)
Battery manufacturing	(1)		(1)	
Coal mining	(1)	(1)	(1)	(1)
Coil Coating	(1)	(1)	(1)	
Copper forming	(1)	(1)	(1)	
Electric & electronic compounds	(1)	(1)	(1)	(1)
Electroplating	(1)	(1)	(1)	
Explosives manufacturing		(1)	(1)	
Foundries	(1)	(1)	(1)	
Gum & Wood	(1)	(1)	(1)	(1)
Inorganic chemicals manufacturing	(1)	(1)	(1)	
Iron & steel manufacturing	(1)	(1)	(1)	
Leather tanning & finishing	(1)	(1)	(1)	(1)
Mechanical products manufacturing	(1)	(1)	(1)	
Nonferrous metals manufacturing	(1)	(1)	(1)	(1)
Ore mining	(1)	(1)	(1)	(1)
Organic chemicals manufacturing	(1)	(1)	(1)	(1)
Paint & ink formulation	(1)	(1)	(1)	(1)
Pesticides	(1)	(1)	(1)	(1)
Petroleum refining	(1)	(1)	(1)	(1)
Pharmaceutical preparations	(1)	(1)	(1)	
Photographic equipment & supplies	(1)	(1)	(1)	(1)
Plastic & synthetic materials manufacturing	(1)	(1)	(1)	(1)
Plastic processing	(1)			
Porcelain enameling	(1)		(1)	(1)
Printing & publishing	(1)	(1)	(1)	(1)
Pulp & paperboard mills	(1)	(1)	(1)	(1)
Rubber processing	(1)	(1)	(1)	
Soap & detergent manufacturing	(1)	(1)	(1)	
Steam electric power plants	(1)	(1)	(1)	
Textile mills	(1)	(1)	(1)	(1)
Timber products processing	(1)	(1)	(1)	(1)

[1] Testing required

* Pollutants listed in Table II

(2) Table II - Organic Toxic Pollutants in Each of Four (4) Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC-MS)

Volatiles	Acid Compounds	Base/Neutral	Pesticides
1V acrolein	1A 2-chlorophenol	1B acenaphthene	1P aldrin
2V acrylonitrile	2A 2,4-dichlorophenol	2B acenaphthylene	2P alpha-BHC
3V benzene	3A 2,4-dimethylphenol	3B anthracene	3P beta-BHC
5V bromoform	4A 4,6-dinitro-o-cresol	4B benzidine	4P gamma-BHC
6V carbon tetrachloride	5A 2,4-dinitrophenol	5B benzo(a)anthracene	5P delta-BHC
7V chlorobenzene	6A 2-nitrophenol	6B benzo(a)pyrene	6P chlordane
8V chlorodibromomethane	7A 4-nitrophenol	7B 3,4-benzofluoranthene	7P 4,4'-DDT
9V chloroethane	8A p-chloro-m-cresol	8B benzo(ghi)perylene	8P 4,4'-DDE
10V 2-chloroethylvinyl ether	9A pentachlorophenol	9B benzo(k)fluoranthene	9P 4,4'-DDD
11V chloroform	10A phenol	10B bis(2-chloroethoxy)methane	10P dieldrin
12V dichlorobromomethane	11A 2,4,6-trichlorophenol	11B bis(2-chloroisopropyl)-ether	11P alpha-endosulfan
14V 1,1-dichloroethane		12B bis(2-ethylhexyl)phthalate	12P beta-endosulfan
15V 1,2-dichloroethane		13B 4-bromophenyl phenyl ether	13P endosulfan sulfate
16V 1,1-dichloroethylene		14B butylbenzyl phthalate	14P endrin
17V 1,2-dichloropropane		15B 2-chloronaphthalene	15P endrin aldehyde
18V 1,3-dichloropropylene		16B 4-chlorophenyl phenyl ether	16P heptachlor
19V ethylbenzene		17B chrysene	17P heptachlor epoxide
20V methyl bromide		18B dibenzo(a,h)anthracene	18P PCB-1242
21V methyl chloride		19B 1,2-dichlorobenzene	19P PCB-1254
22V methylene chloride		20B 1,3-dichlorobenzene	20P PCB-1221
23V 1,1,2,2-tetrachloroethane		21B 1,4-dichlorobenzene	21P PCB-1232
24V tetrachloroethylene		22B 3,3'-dichlorobenzidine	22P PCB-1248
25V toluene		23B diethyl phthalate	23P PCB-1260
26V 1,2-trans-dichloroethylene		24B dimethyl phthalate	24P PCB-1016
27V 1,1,1-trichloroethane		25B di-n-butyl phthalate	25P toxaphene
28V 1,1,2-trichloroethane		26B 2,4-dinitrotoluene	
29V trichloroethylene		27B 2,6-dinitrotoluene	
31V vinyl chloride		28B di-n-octyl phthalate	
		29B 1,2-diphenylhydrazine (as azonbenzene)	
		30B fluroranthene	
		31B fluorene	
		32B hexachlorobenzene	
		33B hexachlorobutadiene	
		34B hexachlorocyclopentadiene	
		35B hexachloroethane	
		36B indneo(1,2,3-cd)pyrene	
		37B isophorone	
		38B napthalene	
		39B nitrobenzene	
		40B N-nitrosodimethylamine	
		41B N-nitrosodi-n-propylamine	
		42B N-nitrosodiphenylamine	
		43B phenanthrene	
		44B pyrene	
		45B 1,2,4-trichlorobenzene	

(3) Table III-Other Toxic Pollutants (Metals and Cyanide) and Total Phenols

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

(4) Table IV-Conventional and Nonconventional Pollutants Required to Be Tested by Existing Dischargers if Expected to be present

Bromide
Chlorine, Total Residual
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Nitrogen, Total Organic
Oil and Grease
Phosphorus, Total
Radioactivity
Sulfate
Sulfide
Sulfite
Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total
Magnesium, Total
Molybdenum, Total
Manganese, Total
Tin, Total
Titanium, Total

(5) Table V-Toxic Pollutants and Hazardous Substances Required To Be Identified by Existing Dischargers if Expected To Be Present

Toxic Pollutants	Hazardous Substances	Hazardous Substances, continued
Asbestos	Acetaldehyde Allyl alcohol Allyl chloride Amyl acetate Aniline Benzonitrile Benzyl chloride Butyl acetate Butylamine Captan Carbaryl Carbofuran Carbon disulfide Chlorpyrifos Coumaphos Cresol Crotonaldehyde Cyclohexane 2,4-D (2,4-Dichlorophenoxy acetic acid) Diazinon Dicamba Dichlobenil Dichlone 2,2-Dichloropropionic acid Dichlorvos Diethyl amine Dimethyl amine Dintrobenzene Diquat Disultoton Diuron Epichlorohydrin Ethion Ehtylene diamine Ethylene dibromide Formaldehyde Furfural Guthion Isoprene Isopropanolamine Dodecylbenzenesulfonate Kelthane Kepone	Malathion Mercaptodimethur Methoxychlor Methyl mercaptan Methyl methacrylate Methyl parathion Mevinphos Mexacarbate Monoethyl amine Monomethyl amine Naled Napthenic acid Nitrotoluene Parathion Phenolsulfanate Phosgene Propargite Propylene oxide Pyrethrins Quinoline Resorcinol Strontium Strychnine Styrene 2,4,5-T (2,4,5-Trichlorophenoxy acetic acid) TDE (Tetrachlorodiphenylethane) 2,4,5-TP(2-2,4,5-Trichlorophenoxy)propanoic acid Trichlorofan Triethanolamine dodecylbenzenesulfonate Triethylamine

Section 9. Signatories to Permit Applications and Reports. (1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer is:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

2. The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. A copy of that authority shall be provided to the cabinet.

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

1. The chief executive officer of the agency; or

2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA).

(2) All reports required by permits, and other information requested by the cabinet shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility

or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(c) The written authorization is submitted to the cabinet.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsections (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Section 10. Concentrated Animal Feeding Operations. (1) Permit requirement. Concentrated animal feeding operations are point sources subject to the KPDES permit program.

(2) Case-by-case designation of concentrated animal feeding operations.

(a) The cabinet may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the Commonwealth. In making this designation the cabinet shall consider the following factors:

1. The size of the animal feeding operation and the amount of wastes reaching waters of the Commonwealth;

2. The location of the animal feeding operation relative to waters of the Commonwealth;

3. The means of conveyance of animal wastes and process waste waters into waters of the Commonwealth;

4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the Commonwealth; and

5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals defined in 401 KAR 5:001 shall be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the Commonwealth through a manmade ditch, flushing system, or other similar manmade device; or

2. Pollutants are discharged directly into waters of the Commonwealth which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals or their wastes confined in the operation.

(c) A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the cabinet has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

Section 11. Concentrated Aquatic Animal Production Facilities. (1) Permit requirement. Concentrated aquatic animal production facilities, as set forth in this section, are point sources subject to the KPDES permit program.

(2) A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this section if it contains, grow, or holds aquatic animals in either of the following categories:

(a) Cold water fish species or other cold water aquatic animals, including, but not limited to, the Salmonidae family of fish; e.g., trout and salmon, in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) Warm water fish species or other warm water aquatic animals, Including, but not limited to, the Ameiuride, Centrarchidae and Cyprinidae families of fish; e.g., respectively, catfish, sunfish and minnows, in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

1. Closed ponds which discharge only during periods of excess runoff; or

2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(3) Case-by-case designation of concentrated aquatic animal production facilities.

(a) The cabinet may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the Commonwealth. In making this designation the cabinet shall consider the following factors:

1. The location and quality of the receiving waters of the Commonwealth;

2. The holding, feeding, and production capacities of the facility;

3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and

4. Other relevant factors.

(b) A permit application shall not be required from a concentrated aquatic animal production facility designated under this subsection until the cabinet has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

Section 12. Storm Water Discharges. (1) Permit requirement.

(a) Prior to October 1, 1992, discharges composed entirely of storm water shall not be required to obtain a KPDES permit except:

1. A discharge with respect to which a permit has been issued prior to February 4, 1987;

2. A discharge associated with industrial activity (see also paragraph (d) of this subsection);

3. A discharge from a large municipal separate storm sewer system;

4. A discharge from a medium municipal separate storm sewer system; and

5. A discharge which the cabinet or the EPA regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (b) of this subsection or agricultural storm water runoff which is exempted from the definition of point source in 401 KAR 5:001. The cabinet may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the cabinet may consider the following factors:

a. The location of the discharge with respect to waters of the

Commonwealth;

b. The size of the discharge;

c. The quantity and nature of the pollutants discharged to waters of the Commonwealth; and

d. Other relevant factors.

(b) The cabinet shall not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances including but not limited to pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of these operations.

(c) Large and medium municipal separate storm sewer systems.

1. Permits shall be obtained for all discharges from large and medium municipal separate storm sewer systems.

2. The cabinet may either issue one (1) system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

3. The owner or operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system shall either:

a. Participate in a permit application, i.e., be a permittee or a copermittee, with one (1) or more other owner or operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

b. Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the owner or operator is responsible; or

c. A regional authority may be responsible for submitting a permit application under the following guidelines:

(i) The regional authority together with coapplicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time Part 1 of the application is due;

(ii) The permit applicant or coapplicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(iii) Each of the owners or operators of municipal separate storm sewers within the systems defined in 401 KAR 5:001, that are under the purview of the designated regional authority, shall comply with the application requirements of subsection (3) of this section.

4. One (1) permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The cabinet may issue one (1) system-wide permit covering all or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

5. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

6. Copermittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are owners or operators.

(d) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of subsection (2) of this section, an owner or operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the owner or operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing this discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing KPDES permit number.

(e) Other municipal separate storm sewers. The cabinet may issue permits for municipal separate storm sewers that are designated under paragraph (a)5 of this subsection on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(f) Nonmunicipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the cabinet may issue: a single KPDES permit, with each discharger a copermittee to a permit issued to the owner or operator of the portion of the system that discharges into waters of the Commonwealth; or, individual permits to each discharger of storm water associated with industrial activity through the nonmunicipal conveyance system.

1. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer shall be covered by an individual permit, or a permit issued to the owner or operator of the portion of the system that discharges to waters of the Commonwealth, with each discharger to the nonmunicipal conveyance a copermittee to that permit.

2. Where there is more than one (1) owner or operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity shall submit applications.

3. Any permit covering more than one (1) owner or operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that shall obtain KPDES permits in accordance with the procedures of Section 5 of this administrative regulation and are not subject to the provisions of this section.

(h) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the Clean Water Act. See 40 CFR Part 35, Subpart I, Appendix A(b)H.2.j.

(2) Application requirements for storm water discharges associated with industrial activity.

(a) Individual application. Dischargers of storm water associated with industrial activity shall apply for an individual permit, apply for a permit through a group application, or seek coverage under an issued storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the cabinet is evaluating for designation under paragraph (a)5 of this subsection and is not a municipal separate storm sewer, and which are not part of a group application described under subsection (2)(b) of this section, shall submit a KPDES application in accordance with the requirements of Section 3 of this administrative regulation as modified and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form F. Applicants for discharges composed of storm water and nonstorm water shall submit Form 1, Form Short C, and Form F.

1. Except as provided in subparagraphs 2, 3, and 4 of this paragraph the owner or operator of a storm water discharge associated with industrial activity subject to this section shall provide:

a. A site map showing topography, or indicating the outline of drainage areas served by the outfalls covered in the application if a topographic map is unavailable, of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities, including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34; each well where fluids from the facility are injected underground; springs; and other surface water bodies which receive storm water discharges from the facility;

b. An estimate of the area of impervious surfaces, including paved areas and building roofs, and the total area drained by each outfall, within a mile radius of the facility, and a narrative description of the following: significant materials that in the three (3) years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of the materials; materials management practices employed, in the three (3) years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

c. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of nonstorm water discharges which are not covered by a KPDES permit; tests for these nonstorm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

d. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three (3) years prior to the submittal of this application;

e. Quantitative data based on samples collected during storm events and collected in accordance with Section 3 of this administrative regulation from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(i) Any pollutant limited in an effluent guideline to which the facility is subject;

(ii) Any pollutant listed in the facility's KPDES permit for its process wastewater, if the facility is operating under an existing KPDES permit;

(iii) Oil and grease, pH, BOD, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(iv) Any information on the discharge required under Section 2(7)(f) and (g) of this administrative regulation;

(v) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm events sampled, and the method of flow measurement or estimation; and

(vi) The date and duration in hours of the storm events sampled, rainfall measurements or estimates of the storm event in inches which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event in hours;

f. Owners or operators of a discharge which is composed entirely of storm water are exempt from the requirements of Section 2(2), (3), (4), (5), and (7)(a), (b) and (e) of this administrative regulation; and

g. Owners or operators of new sources or new discharges which are composed in part or entirely of storm water shall include estimates for the pollutants or parameters listed in clause e of this subparagraph instead of actual sampling data, along with the source of each estimate. Owners or operators of new sources or new discharges composed in part or entirely of storm water shall provide quantitative data for the parameters listed in clause e of this subparagraph within two (2) years after commencement of discharge, unless data have already been reported under the monitoring requirements of the KPDES permit for the discharge.

2. The owner or operator of an existing or new storm water discharge that is storm water associated with construction activity, is exempt from the requirements of Section 2 of this administrative regulation and subparagraph 1 of this paragraph. The owner or operator shall provide a narrative description of:

a. The location, including a map, and the nature of the construction activity;

b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements;

d. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements;

e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

f. The name of the receiving water.

3. The owner or operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with subparagraph 1 of this paragraph unless the facility:

a. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or

b. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

c. Contributes to a violation of a water quality standard.

4. The owner or operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of these operations.

5. Applicants shall provide such other information the cabinet may reasonably require under Section 2(12) of this administrative regulation to determine whether to issue a permit and may require any facility subject to subparagraph 2 of this paragraph to comply with subparagraph 1 of this paragraph.

(b) Group application for discharges associated with industrial activity. In lieu of individual applications or notice of intent to be covered by a general permit for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants, except facilities that have existing individual KPDES permits for storm water, that are part of the same subcategory (see 40 CFR Chapter I, Subchapter N, Part 405 to 471) or, where such grouping is inapplicable, are sufficiently similar as to

be appropriate for general permit coverage under 401 KAR 5:055, Section 5. The Part 1 application shall be submitted to the Office of Water Enforcement and Permits, U.S. EPA, 401 M Street, SW., Washington, DC 20460 (EN-336) for approval. Once a Part 1 application is approved, group applicants shall submit Part 2 of the group application to the Office of Water Enforcement and Permits. A group application shall consist of:

1. Part 1. Part 1 of a group application shall:

a. Identify the participants in the group application by name and location. Kentucky facilities participating in the group application are listed in precipitation zone 2 as given in Appendix E of 40 CFR Part 122.

b. Include a narrative description summarizing the industrial activities of participants of the group application and explaining why the participants, as a whole, are sufficiently similar to be a covered by a general permit;

c. Include a list of significant materials stored exposed to precipitation by participants in the group application and materials management practices employed to diminish contact by these materials with precipitation and storm water runoff;

d. Identify ten (10) percent of the dischargers participating in the group application, with a minimum of ten (10) dischargers, and either a minimum of two (2) dischargers from each precipitation zone indicated in Appendix E of 40 CFR Part 122 in which ten (10) or more members of the group are located, or one (1) discharger from each precipitation zone indicated in Appendix E of 40 CFR Part 122 in which nine (9) or fewer members of the group are located, from which quantitative data will be submitted in Part 2. If more than 1,000 facilities are identified in a group application, no more than 100 dischargers shall submit quantitative data in Part 2. Groups of between four (4) and ten (10) dischargers may be formed. However, in groups of between four (4) and ten (10), at least half the facilities shall submit quantitative data, and at least one (1) facility in each precipitation zone in which members of the group are located shall submit data. A description of why the facilities selected to perform sampling and analysis are representative of the group as a whole in terms of the information provided in subparagraphs b and c of this paragraph, shall accompany this section of the application. Different factors impacting the nature of the storm water discharges, such as processes used and material management, shall be represented, to the extent feasible, in a manner roughly equivalent to their proportion in the group.

2. Part 2. Part 2 of a group application shall contain quantitative data (NPDES Form 2F), as modified by paragraph (a) of this subsection, so that when Part 1 and Part 2 of the group application are taken together, a complete NPDES application (Form 1, Form 2C, and Form 2F) can be evaluated for each discharger identified in subparagraph 1d of this paragraph.

(3) Application requirements for large and medium municipal separate storm sewer discharges. The owner or operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the cabinet under subsection (1)(a)5 of this section, may submit a jurisdiction-wide or system-wide permit application. If more than one (1) public entity owns or operates a municipal separate storm sewer within a geographic area including adjacent or interconnected municipal separate storm sewer systems, the owners or operators may be coapplicants to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subsection (1)(a)5 of this section shall include;

(a) Part 1. Part 1 of the application shall consist of:

1. General information. The applicants' name, address, telephone number of contact person, ownership status and status as a state or local government entity.

2. Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in paragraph (b)1 of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

3. Source identification.

a. A description of the historic use of ordinances, guidance or other controls which limited the discharge of nonstorm water discharges to any POTW serving the same area as the municipal separate storm sewer system.

b. A USGS seven and one-half (7.5) minute topographic map, or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective, extending one (1) mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(i) The location of known municipal storm sewer system outfalls discharging to waters of the Commonwealth;

(ii) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten (10) year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(iii) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(iv) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a KPDES permit;

(v) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(vi) The identification of publicly owned parks, recreational areas, and other open lands.

4. Discharge characterization.

a. Monthly mean rain and snow fall estimates or summary of weather bureau data and the monthly average number of storm events.

b. Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

c. A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments and lakes, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving these discharges have been:

(i) Assessed and reported in Section 305(b) reports submitted by the Commonwealth, the basis for the assessment, evaluated or monitored, a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(ii) Listed under Section 304(l)(1)(A)(i), Section 304(l)(1)(A)(ii), or Section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(iii) Listed in state nonpoint source assessments required by Section 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution, or contributing to a violation of water quality standards;

(iv) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under Section 314(a) of the CWA. The following shall be included: a description of those publicly owned lakes for which uses are known to be impaired;

a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into these lakes; and a description of methods and procedures to restore the quality of those lakes;

(v) Recognized by the applicant as highly valued or sensitive waters;

(vi) Defined by the U.S. Fish and Wildlife Services's National Wetlands Inventory as wetlands; and

(vii) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

d. Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two (2) grab samples shall be collected during a twenty-four (24) hour period with a minimum period of four (4) hours between samples. For all samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of nonstorm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods referenced in 40 CFR Part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls, other outfall points or any other point of access such as manholes randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(i) A grid system consisting of perpendicular north-south and east-west lines spaced one-fourth (1/4) mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(ii) All cells that contain a segment of the storm sewer system shall be identified; one (1) field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(iii) Field screening points should be located downstream of any sources of suspected illegal or illicit discharge;

(iv) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(v) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(vi) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening, unless access to the separate storm sewer system is impossible; and

(vii) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in clause d(i) through (vi) of this subparagraph, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively, or all major outfalls in the system, if less; In these circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced one-fourth (1/4) mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells. The applicant shall then select major outfalls in as many cells as possible until at least 500 major outfalls for large municipalities or 250 major outfalls for medium municipalities are selected; a field screening analysis shall be undertaken at these major outfalls.

e. Characterization plan. Information and a proposed program to meet the requirements of paragraph (b)3 of this subsection. The description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph (b)3a of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for sampling shall reflect water quality concerns (see clause c of this subparagraph to the extent practicable.

5. Management programs.

a. A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Controls may include, but are not limited to procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements.

b. A description of the existing program to identify illicit connections to the municipal storm sewer system. The description shall include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

6. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs shall be provided.

(b) Part 2. Part 2 of the application shall consist of:

1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

a. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

c. Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

d. Control through interagency agreements among coapplicants the contribution of pollutants from one (1) portion of the municipal system to another portion of the municipal system;

e. Require compliance with conditions in ordinances, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

2. Source identification. List the locations of any major outfalls

that discharge to waters of the Commonwealth that were not reported under paragraph (a)3b(i) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description, such as SIC codes, which best reflects the principal products or services provided by each facility which may discharge to the municipal separate storm sewer, storm water associated with industrial activity;

3. Characterization data. When quantitative data for a pollutant are required under paragraph (a)3a(iii) of this subsection, the applicant shall collect a sample of effluent in accordance with Section 2(7) of this administrative regulation and analyze it for the pollutant in accordance with analytical methods referenced in 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but shall provide a description of the method. The applicant shall provide information characterizing the quality and quantity of discharges covered in the permit application, including:

a. Quantitative data from representative outfalls designated by the cabinet. Based on information received in Part 1 of the application, the cabinet shall designate between five (5) and ten (10) outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system. Where there are less than five (5) outfalls covered in the application, the cabinet shall designate all outfalls. A monitoring plan shall be developed as follows:

(i) For each outfall or field screening point designated under this clause, samples shall be collected of storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements at Section 2(7) of this administrative regulation. The cabinet may allow exemptions to sampling three (3) storm events when climatic conditions create good cause for these exemptions;

(ii) A narrative description shall be provided of the date and duration of the storm events sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous greater than one-tenth (0.1) inch rainfall storm event;

(iii) For samples collected and described under subclause (i) and (ii) of this clause, quantitative data shall be provided for the pollutants listed in Section 8(2) and (3) of this administrative regulation, and for the following pollutants:

Total suspended solids (TSS)
Total dissolved solids (TDS)
COD
BOD
Oil and grease
Fecal coliform
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

(iv) List additional limited quantitative data required by the cabinet for determining permit conditions. The cabinet may require that quantitative data be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness;

b. Estimates of the annual pollutant load of the cumulative discharges to waters of the Commonwealth from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the Commonwealth from all identified municipal outfalls during a storm event for BOD, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

c. A proposed schedule to provide estimates for each major outfall identified in either subparagraph 2 of this paragraph or paragraph (a)3b(i) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under clause a of this subparagraph and

d. A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled, or the location of instream stations, why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

4. Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system-wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs shall be considered by the cabinet when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. The programs shall be based on:

a. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(i) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants, including floatables, in discharges from municipal separate storm sewers;

(ii) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. The plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in clause d of this subparagraph;

(iii) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(iv) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

(v) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for the discharges. This program may be coordinated with the program developed under clause c of this subparagraph; and

(vi) A description of a program to reduce to the maximum extent

practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which shall include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

b. A description of a program, including a schedule, to detect and remove, or require the discharger to the municipal separate storm sewer to obtain a separate KPDES permit for, illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(i) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system. This program description shall address all types of illicit discharges, however the following category of nonstorm water discharges or flows shall be addressed where the discharges are identified by the municipality as sources of pollutants to waters of the Commonwealth: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as specified at 40 CFR 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. Program descriptions shall address discharges or flows from firefighting only where the discharges or flows are identified as significant sources of pollutants to waters of the Commonwealth;

(ii) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by the field screens;

(iii) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstorm water. The procedures may include sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. The description shall include the location of storm sewers that have been identified for the evaluation;

(iv) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(v) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(vi) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(vii) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

c. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(i) Identify priorities and procedures for inspections and establishing and implementing control measures for these discharges;

(ii) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in clause c of this subparagraph, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing KPDES permit for a facility; oil and grease, COD, pH, BOD, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under Section 2(7)(f) and (g) of this administrative regulation.

d. A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(i) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(ii) A description of requirements for nonstructural and structural best management practices;

(iii) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(iv) A description of appropriate educational and training measures for construction site operators.

5. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

6. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under subparagraphs 3 and 4 of this paragraph. This analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of the funds.

7. If more than one (1) legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

8. If requirements under paragraph (a)4e of this subsection and subparagraphs 2, 3b, and 4 of this paragraph are not practicable or are not applicable, the cabinet may exclude any operator of a discharge from a municipal separate storm sewer which is designated under subsection (1)(a)5, (2)(d)2 or (2)(g)2 of this section from these requirements. The cabinet shall not exclude the owner or operator of a discharge from a municipal separate storm sewer identified in 40 CFR 122, Appendix F, G, H, or I, from any of the permit application requirements under this subparagraph except where authorized under this section.

(4) Application deadlines. Any owner or operator of a point source required to obtain a permit under subsection (1)(a) of this section that does not have an effective KPDES permit covering its storm water outfalls shall submit an application in accordance with the following deadlines:

(a) Individual applications.

1. Except as provided in subparagraph 2 of this paragraph, for any storm water discharge associated with industrial activity defined in 401 KAR 5:001 that is not part of a group application as described in subsection (2)(b) of this section or which is not authorized by a storm water general permit, a permit application made pursuant to subsection (2) of this section shall be submitted to the cabinet by October 1, 1992;

2. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, permit applications are not required.

(b) For any group application submitted in accordance with subsection (2)(b) of this section:

1. Part 1.

a. Except as provided in clause b of this subparagraph, Part 1 of the application shall be submitted to the U.S. EPA Director, Office of Water Enforcement and Permits by September 30, 1991;

b. Any municipality with a population of less than 250,000 shall be required to submit a Part 1 application before May 18, 1992.

c. For any storm water discharge associated with industrial activities from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, permit applications are not required.

2. Based on information in the Part 1 application, the Director will approve or deny the members in the group application within sixty (60) days after receiving Part 1 of the group application.

3. Part 2.

a. Except as provided in clause b of this subparagraph, Part 2 of the application shall be submitted to the Director, Office of Water Enforcement and Permits by October 1, 1992;

b. Any municipality with a population of less than 250,000 shall not be required to submit a Part 1 application before May 17, 1993.

c. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, permit applications are not required.

4. Rejected facilities.

a. Except as provided in clause b of this subparagraph, facilities that are rejected as members of a group shall submit an individual application or obtain coverage under an applicable general permit no later than twelve (12) months after the date of receipt of the notice of rejection or October 1, 1992, which ever comes first.

b. Facilities that are owned or operated by a municipality and that are rejected as members of Part I group application shall submit an individual application no later than 180 days after the date of the receipt of the notice of registration or October 1, 1992, whichever is later.

5. A facility defined as a storm water associated with industrial activity in 401 KAR 5:001 may add on to a group application submitted in accordance with subparagraph 1 of this paragraph at the discretion of the U.S. EPA Office of Water Enforcement and Permits, and only upon a showing of good cause by the facility and the group applicant; the request for the addition of the facility shall be made no later than February 18,1992. The addition of the facility shall not cause the percentage of the facilities that are required to submit quantitative data to be less than ten (10) percent, unless there are over 100 facilities in the group that are submitting quantitative data. Approval to become part of group application shall be obtained from the group or the trade association representing the individual facilities.

(c) For any discharge from a large municipal separate storm sewer system:

1. Part 1 of the application shall be submitted to the cabinet by November 18, 1991;

2. Based on information received in the Part 1 application the cabinet shall approve or deny a sampling plan under subsection (3)(a)4e of this section within ninety (90) days after receiving the Part 1 application;

3. Part 2 of the application shall be submitted to the cabinet by November 16, 1992.

(d) For any discharge from a medium municipal separate storm sewer system;

1. Part 1 of the application shall be submitted to the cabinet by May 18, 1992.

2. Based on information received in the Part 1 application the cabinet will approve or deny a sampling plan within ninety (90) days after receiving the Part 1 application.

3. Part 2 of the application shall be submitted to the cabinet by May 17, 1993.

(e) A permit application shall be submitted to the cabinet within sixty (60) days of notice, unless permission for a later date is granted by the cabinet for:

1. A storm water discharge which either the cabinet or the EPA Regional Administrator determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth (see subsection (1)(a)5 of this section); or

2. A storm water discharge subject to subsection (2)(a)5 of this section.

(f) Facilities with existing KPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted in accordance with the requirements of Section 2 of this administrative regulation and subsection (2) of this section 180 days before the expiration of the permits.

(5) Petitions.

(a) Any owner or operator of a municipal separate storm sewer system may petition the cabinet to require a separate KPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the cabinet to require a KPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth.

(c) The owner or operator of a municipal separate storm sewer system may petition the cabinet to reduce the census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities or regional authorities in which combined sewers are operated, the census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the KPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the cabinet for the designation of a large or medium municipal separate storm sewer system as defined in 401 KAR 5:001.

(e) The cabinet shall make a final determination on any petition received under this section within ninety (90) days after receiving the petition.

Section 13. Silvicultural Activities. Permit requirement. Silvicultural point sources, as defined in 401 KAR 5:001, are point sources subject to the KPDES permit program.

Section 14. KPDES Application Forms. The following permit applications forms are hereby incorporated by reference. Application forms may be obtained from or inspected at the KPDES Branch at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays.

(1) KPDES Form 1, revised April 1994;
(2) KPDES Form A, revised April 1994;
(3) KPDES Form B, revised April 1994;
(4) KPDES Form C, revised April 1994;
(5) KPDES Short Form C, revised April 1994; and
(6) KPDES Form F, revised April 1994.

~~[(b) Any person who is required to have a permit and who does not have an effective permit, shall submit a complete application to the director in accordance with this section and 401 KAR 5:075. A complete application shall include a BMP program, if necessary, under 401 KAR 5:065, Section 2(10). The following are exceptions to the application requirements:~~

~~1. Persons covered by general permits under 401 KAR 5:055,~~

Section 5;

2. Discharges excluded under 401 KAR 5:055, Section 1; and

3. Users of a privately owned treatment works unless the director requires otherwise under 401 KAR 5:065, Section 2(12).

(2) Time to apply.

(a) Any person proposing a new discharge shall submit an application at least 150 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the director.

(b) Any existing Group I storm water discharge as defined in Section 8(2)(b) of this regulation that does not have an effective permit shall submit an application by December 31, 1987. Any existing Group II storm water discharge as defined in Section 8(2)(c) of this regulation that does not have an effective permit shall submit an application by June 30, 1989. Any discharger designated under Section 8(3) of this regulation shall submit an application within six (6) months of notification of its designation. (3) Duty to apply. When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit.

(4) Duty to reapply.

(a) Any person with a currently effective permit shall submit a new application at least 150 days before the expiration date of the existing permit, unless permission for a later date has been granted by the director. The director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) Continuation of expiring permits.

1. The conditions of an expired permit continue in force until the effective date of a new permit if:

a. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

b. The director, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

2. Effect. Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

3. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the director may choose to do any or all of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under 401 KAR 5:075, Section 3(2);

c. Issue a new permit under 401 KAR 5:075 with appropriate conditions; or

d. Take other actions authorized by the KPDES regulations.

(5) Completeness. The director will not issue a KPDES permit before receiving a complete application for a permit. A permit application is complete when the cabinet receives an application form with any supplemental information which is completed to the director's satisfaction.

(6) Information requirements. All applicants for KPDES permits shall provide the following information to the director, using the application form provided by the director:

(a) The activities being conducted which require the applicant to obtain a KPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) From one (1) to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as to federal, state, private, public, or other entity.

(e) A listing of all other relevant environmental permits, or construction approvals issued by the cabinet or other state or federal permits, as requested.

(f) A topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area. Group II storm water discharges, as defined in Section 8 of this regulation, are exempt from the requirements of this paragraph.

(g) A brief description of the nature of the business.

(h) For Group II storm water dischargers (as defined in Section 8 of this regulation) only, a brief narrative description of:

1. The drainage area, including an estimate of the size and nature of the area;

2. The receiving water; and

3. Any treatment applied to the discharge.

(i) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to 401 KAR 5:080, Section 5.

(7) Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this regulation for a period of at least three (3) years from the date the application is signed.

(8) Service of process. Every applicant and permittee shall provide the cabinet an address for receipt of any legal document for service of process. The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet may tender any legal notice including but not limited to service of process in connection with any enforcement action. Service, whether by hand or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

Section 2. Confidentiality of Information. (1) In accordance with KRS 224.10-210, any information submitted to the cabinet pursuant to the KPDES regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the cabinet may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in KRS 224.035.

(2) Information, which includes effluent data, required by KPDES application forms provided by the director under Section 1 of this regulation may not be claimed confidential. Information contained in KPDES permits or permit applications may not be claimed as confidential business information.

Section 3. Signatories to Permit Applications and Reports. (1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

1. A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or

2. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For the

purpose of this section, a principal executive officer of a federal agency includes:

1. The chief executive officer of the agency; or

2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (for example, Regional Administrators of EPA).

(2) Reports. All reports required by permits, other information requested by the director, and all permit applications submitted for Group II storm water discharges under Section 8 of this regulation shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(c) The written authorization is submitted to the director.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Section 4. Application Requirements for Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. Existing manufacturing, commercial, mining, and silvicultural dischargers applying for KPDES permits shall provide the following information to the director, using application forms provided by the director:

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water shall be provided by the applicant.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units shall be included in the application. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subsection (3) of this section. The water balance shall show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined the applicant may provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. The applicant shall provide a narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms, for example, dye making reactor, distillation tower. For a privately owned treatment works, this information shall include the identity of each user of the treatment works.

(4) Intermittent flows. If any of the discharges described in subsection 3 of this section are intermittent or seasonal, the applicant shall provide a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water run off, spillage, or leaks.

(5) Maximum production. If an EPA effluent guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline shall be included. The reported measure shall reflect the actual production of the facility as required by 401 KAR 5:065, Section 3(2).

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates shall be included.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. When an applicant has two (2) or more outfalls with substantially identical effluent, the director may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, twenty four (24) hour composite samples must be used. However, a minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty four (24) hours, and a minimum of one (1) to four (4) grab samples may be taken for storm water discharges depending on the duration of the discharge. One (1) grab sample shall be taken in the first hour (or less) of discharge with one (1) additional grab sample taken in each succeeding hour of discharge up to a minimum of four (4) grab samples for discharges lasting four (4) or more hours. In addition, the director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. An applicant is assumed to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water run off from the facility.)

(a)1. Every applicant shall report quantitative data for every outfall for the following pollutants:

a. Biochemical oxygen demand (BOD).

b. Chemical oxygen demand.

c. Total organic carbon.

d. Total suspended solids.

e. Ammonia (as N).

f. Temperature (both winter and summer).

g. pH.

2. The director may waive the reporting requirements for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in subparagraph 1 of this paragraph if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(b) Each applicant with processes in one (1) or more primary industry category, listed in Section 10 of this regulation, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Section 13(1) of this regulation for the applicant's industrial category or categories unless the applicant qualifies as a small business under subsection (8) of this section. Section 13(2) of this regulation lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromotography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

2. The pollutants listed in Section 13(3) of this regulation: the toxic metals, cyanide, and total phenols.

(c)1. Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in Section 13(4) of this regulation (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Section 13(2) or (3) of this regulation (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (a)2 of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of ten (10) ppb or greater, the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2 methyl 4,6 dinitrophenol, where any of these four (4) pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than ten (10) ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2 methyl 4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subsection (8) of this section is not required to analyze for pollutants listed in Section 13(2) of this regulation (the organic toxic pollutants).

(d) Each applicant shall indicate any knowledge or reason to believe that any of the pollutants in Section 13(5) of this regulation, certain hazardous substances and asbestos is discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for any pollutant.

(e) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8 tetrachlorodibenzo p dioxin (TCDD) if it:

1. Uses or manufactures 2,4,5 trichlorophenoxy acetic acid (2,4,5-T); 2 (2,4,5 trichlorophenoxy) propanoic acid (Silvex, 2,4,5 TP); 2 (2,4,5 trichlorophenoxy) ethyl 2,2 dichloropropionate (Erbon); 0,0 dimethyl 0 (2,4,5 trichlorophenyl) phosphorothioate (Ronnel); 2,4,5 trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one (1) of the following criteria is exempt from the requirements in paragraphs (b)1 or (c)1 of this subsection to submit quantitative data for the pollutants listed in Section 13(2) of this regulation, organic toxic pollutants:

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than $100,000 per year, in second quarter 1980 dollars.

(9) Used or manufactured toxics. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or by product. The director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the director has adequate information to issue the permit.

(10) Storm water point source exemption.

(a) An applicant that qualifies as a Group II storm water discharger under Section 8(2) of this regulation is exempt from the requirements of Sections 1(6)(f) and 4 of this regulation, unless the director requests such information.

(b) For the purpose of subsection (3) of this section, storm water point sources may estimate the average flow of their discharge and must indicate the rainfall event and the method of estimation on which the estimate is based.

(c) The director may require additional information under subsection (14) of this section, and may request any Group II storm water dischargers to comply with this section.

(11) Potential discharges. The applicant shall provide a description of the expected levels of and the reasons for any discharges of pollutants which the applicant knows or has reason to believe will exceed two (2) times the values reported in subsection (7) of this section over the next five (5) years.

(12) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(13) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by subsection (7) of this section, the identity of each laboratory or firm and the analyses performed shall be included in the application.

(14) Additional information. In addition to the information reported on the application form, applicants shall provide to the director, upon request, other information as the director may reasonably require to assess the discharges of the facility and to determine whether to issue a KPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

Section 5. Concentrated Animal Feeding Operations: Specific Application Requirements. (1) Permit required. Concentrated animal feeding operations are point sources subject to the KPDES permit program.

(2) Definitions.

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

1. Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two (2) or more animal feeding operations under common ownership are considered, for the purposes of the KPDES regula-

tions, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(c) "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in Section 11 of this regulation or which the director designates under subsection (3) of this section.

(3) Case by case designation of concentrated animal feeding operations.

(a) The director may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the Commonwealth. In making this designation the director will consider the following factors:

1. The size of the animal feeding operation and the amount of wastes reaching waters of the Commonwealth;

2. The location of the animal feeding operation relative to waters of the Commonwealth;

3. The means of conveyance of animal wastes and process wastewaters into waters of the Commonwealth;

4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the Commonwealth; and

5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals set forth in Section 11 of this regulation will be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the Commonwealth through a manmade ditch, flushing system, or other similar manmade device; or

2. Pollutants are discharged directly into the waters of the Commonwealth which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(c) A permit application will not be required from a concentrated animal feeding operation designated under this section until the director or an authorized representative has conducted an on site inspection of the operation and determined that the operation should and could be regulated under the KPDES permit program.

(4) Information required. New and existing concentrated animal feeding operations shall provide the following information to the director, using the application form provided by the director:

(a) The type and number of animals in open confinement and housed under roof.

(b) The number of acres used for confinement feeding.

(c) The design basis for the run off diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

Section 6. Concentrated Aquatic Animal Production Facilities: Specific Application Requirements. (1) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the KPDES permit program.

(2) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Section 12 of this regulation or which the director designates under subsection (3) of this section.

(3) Case by case designation of concentrated aquatic animal production facilities.

(a) The director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the Commonwealth. In making this designation the director will consider the following factors:

1. The location and quality of the receiving waters of the Commonwealth;

2. The holding, feeding, and production capacities of the facility;

3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and

4. Other relevant factors.

(b) A permit application will not be required from a concentrated aquatic animal production facility designated under this section until the director or authorized representative has conducted on site inspection of the facility and has determined that the facility should and could be regulated under the KPDES permit program.

(4) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the director, using the application form provided by the director:

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of feed fed during that month.

Section 7. Aquaculture Projects: Specific Application Requirements. (1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the KPDES permit program and in accordance with 401 KAR 5:080, Section 2.

(2) Definitions.

(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(b) "Designated project area" means the portions of the waters of the Commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

Section 8. Storm water Discharges. (1) Permit requirement. Storm water point sources, as defined in this section, are point sources subject to the KPDES permit program. The director may issue a KPDES permit or permits for discharges into waters of the Commonwealth from a storm water point source covering all conveyances which are a part of that storm water discharge. Where there is more than own (1) owner or operator of a single system of such conveyances, any or all discharges into the storm water discharge system may be identified in the application submitted by the owner or operator of the portion of the system that discharges directly into waters of the Commonwealth. Any such application shall include all information regarding discharges into the system that would be required if the dischargers submitted separate applications. Dischargers so identified shall not require a separate permit unless the director specifies otherwise. Any permit covering more than one (1) owner or operator shall identify the effluent limitations, if any, which apply to each owner or operator. Where there is more than one (1) owner or operator, no discharger into the storm water discharge may be subject, without its consent, to a permit condition for discharges into the storm water discharge other than its own discharges into that system. All dischargers into a storm water discharge system must either be covered by an individual permit or a permit issued to the owner or operator of the portion of the system that directly discharges. (See Section 1(2)(b) of this regulation for application deadline for existing storm water point sources.)

(2) Definitions.

(a) "Storm water point source" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water run off and

which:

1. Is located at an urbanized area as designated by the University of Louisville's Urban Studies Center consistent with the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1975);

2. Discharges from lands or facilities used for industrial or commercial activities; or

3. Is designated under subsection (3) of this section. Conveyances that discharge storm water run off combined with municipal sewage are point sources that must obtain KPDES permits, but are not "storm water point sources."

(b) "Group I storm water discharge" means any "storm water point source" which is:

1. Subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards;

2. Designated under subsection (3) of this section; or

3. Located at an industrial plant or in plant associated areas. "Plant associated areas" means industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas, and material or products loading and unloading areas. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots.

(c) "Group II storm water discharge" means any "storm water point source" not included in paragraph (b) of this subsection. (See Section 4(10) of this regulation for exemption from certain application requirements.)

(d) A conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water run off which does not constitute a "storm water point source" under this subsection is not considered a point source subject to the requirements of CWA.

(e) Whether a system of conveyances is or is not a storm water point source for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA.

(3) Case by case designation of storm water discharges. The director may designate a conveyance or system of conveyances primarily used for collecting and conveying storm water run off as a storm water point source. This designation may be made to the extent allowed or required by EPA promulgated effluent limitations guidelines for point sources in the storm water discharge category or when:

(a) A Kentucky Water Quality Management plan under CWA Section 208 (33 USC Section 1288) which contains requirements applicable to such point sources is approved; or

(b) The director determines that a storm water discharge is a significant contributor of pollution to the waters of the Commonwealth. In making this determination, the director shall consider the following factors:

1. The location of the discharge with respect to waters of the Commonwealth;

2. The size of the discharge;

3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and

4. Other relevant factors.

Section 9. Silvicultural Activities: Specific Application Requirements. (1) Permit requirement. Silvicultural point sources, as defined in this section, are point sources subject to the KPDES permit program.

(2) Definitions.

(a) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the Commonwealth. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run off.

(b) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self contained bodies of water or stored on land where water is applied intentionally on the logs.

Section 10. Primary Industry Categories. Any KPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the KPDES regulations whether or not applicable effluent limitations guidelines have been promulgated.

(1) Adhesives and sealants.
(2) Aluminum forming.
(3) Auto and other laundries.
(4) Battery manufacturing.
(5) Coal mining.
(6) Coil coating.
(7) Copper forming.
(8) Electrical and electronic components.
(9) Electroplating.
(10) Explosives manufacturing.
(11) Foundries.
(12) Gum and wood chemicals.
(13) Inorganic chemicals manufacturing.
(14) Iron and steel manufacturing.
(15) Leather tanning and finishing.
(16) Mechanical products manufacturing.
(17) Nonferrous metals manufacturing.
(18) Ore mining.
(19) Organic chemicals manufacturing.
(20) Paint and ink formulation.
(21) Pesticides.
(22) Petroleum refining.
(23) Pharmaceutical preparations.
(24) Photographic equipment and supplies.
(25) Plastics processing.
(26) Plastic and synthetic materials manufacturing.
(27) Porcelain enameling.
(28) Printing and publishing.
(29) Pulp and paper mills.
(30) Rubber processing.
(31) Soap and detergent manufacturing.
(32) Steam electric power plants.
(33) Textile mills.
(34) Timber products processing.

Section 11. Criteria for Determining a Concentrated Animal Feeding Operation. An animal feeding operation is a concentrated animal feeding operation for purposes of Section 5 of this regulation if either of the following criteria are met:

(1) Criteria of number only. The facility meets the criteria if more than the numbers of animals specified in any of the following categories are confined:

(a) 1,000 slaughter and feeder cattle;
(b) 700 mature dairy cattle, whether milked or dry cows;
(c) 2,500 swine each weighing over twenty five (25) kilograms, approximately fifty five (55) pounds;
(d) 500 horses;
(e) 10,000 sheep or lambs;
(f) 55,000 turkeys;
(g) 100,000 laying hens or broilers, if the facility has continuous overflow watering;
(h) 30,000 laying hens or broilers, if the facility has a liquid manure handling system;

(i) 5,000 ducks; or

(j) 1,000 animal units.

(2) Criteria of number and condition of the discharge. The facility meets the criteria if more than the following number and types of animals are confined:

(a) 300 slaughter or feeder cattle;

(b) 200 mature dairy cattle, whether milker or dry cows;

(c) 750 swine each weighing over twenty-five (25) kilograms, approximately fifty-five (55) pounds;

(d) 150 horses;

(e) 3,000 sheep or lambs;

(f) 16,500 turkeys;

(g) 30,000 laying hens or broilers, if the facility has continuous overflow watering;

(h) 9,000 laying hens or broilers, if the facility has a liquid manure handling system;

(i) 1,500 ducks; or

(j) 300 animal units; and

(k) Either one (1) of the following conditions are met:

1. Pollutants are discharged into waters of the Commonwealth through a manmade ditch, flushing system or other similar manmade device; or

2. Pollutants are discharged directly into waters of the Commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) Special provision. No animal feeding operation is a concentrated animal feeding operation as defined in subsections (1) and (2) of this section if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event.

(4) Definitions.

(a) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting over twenty five (25) kilograms (approximately fifty five (55) pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(b) "Manmade" means constructed by man and used for the purpose of transporting wastes.

Section 12. Criteria for Determining a Concentrated Aquatic Animal Production Facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of Section 6 of this regulation if it contains, grows, or holds aquatic animals in either of the following categories:

(1) Cold water aquatic animals.

(a) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) Cold water aquatic animals include, but are not limited to the Salmonidae family of the fish; e.g. trout and salmon.

(2) Warm water aquatic animals.

(a) Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

1. Closed ponds which discharge only during periods of excess run off; or

2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(b) "Warm water aquatic animals" include, but are not limited to, the Ictaluridae, Centrarchidae, and Cyprinidae families of fish; e.g., respectively, catfish, sunfish, and minnows.

Section 13. KPDES Permit Application Testing Requirements. (1) Table I Testing Requirements for Organic Toxic Pollutants for Industrial Category for Existing Dischargers

Industrial category	GC/MS fraction[1]			
	Volatile	Acid	Base/ neutral	Pesticide
Adhesives and sealants	(*)	(*)	(*)	
Aluminum forming	(*)	(*)	(*)	
Auto and other laundries	(*)	(*)	(*)	(*)
Battery manufacturing	(*)		(*)	
Coal mining	(*)	(*)	(*)	(*)
Coil coating	(*)	(*)	(*)	
Cooper forming	(*)	(*)	(*)	
Electric and electonic tronic components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	
Explosives manufacturing		(*)	(*)	
Foundries	(*)	(*)	(*)	
Gum and wood chemicals	(*)	(*)	(*)	(*)
Inorganic chemicals manufacturing	(*)	(*)	(*)	
Iron and steel manufacturing	(*)	(*)	(*)	
Leather tanning and finishing	(*)	(*)	(*)	(*)
Mechanical products manufacturing	(*)	(*)	(*)	
Nonferrous metals manufacturing	(*)	(*)	(*)	(*)
Ore mining	(*)	(*)	(*)	(*)
Organic chemicals manufacturing	(*)	(*)	(*)	(*)
Paint and ink formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum refining	(*)	(*)	(*)	(*)
Pharmaceutical preparations	(*)	(*)	(*)	
Photographic equipment and supplies	(*)	(*)	(*)	(*)
Plastic and synthetic materials manufacturing	(*)	(*)	(*)	(*)
Plastic processing	(*)			
Porcelain enameling	(*)		(*)	(*)
Printing and publishing	(*)	(*)	(*)	(*)
Pulp and paper mills	(*)	(*)	(*)	(*)
Rubber processing	(*)	(*)	(*)	
Soap and detergent manufacturing	(*)	(*)	(*)	
Steam electric power plants	(*)	(*)	(*)	
Textile mills	(*)	(*)	(*)	(*)
Timber products processing	(*)	(*)	(*)	(*)

[1]The toxic pollutants in each fraction are listed in Table II.

*Testing required.

(2) Table II Organic Toxic Pollutants in Each of Four (4) Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC/MS):

(a) Volatiles:

1V acrolein	16V 1,1 dichloroethylene
2V acrylonitrile	17V 1,2 dichlorpropane

3V benzene
4V bis (chloromethyl) ether
5V bromoform
6V carbon tetra chloride
7V chlorobenzene
8V chlorodibromo methane
9V chloroethane
10V 2 chloroethylvinyl ether
11V chloroform
12V dichlorobromo methane
13V dichlorodifluoro methane
14V 1,1 dichloroethane
15V 1,2 dichloroethane
18V 1,2 dichloropropylene
19V ethylbenzene
20V methyl bromide
21V methyl chloride
22V methylene chloride
23V 1,1,2,2 tetrachloro ethane
24V tetrachloroethylene
25V toluene
26V 1,2 trans dichloro ethylene
27V 1,1,1 trichloroethane
28V 1,1,2 trichloroethane
29V trichloroethylene
30V trichlorofluoro methane
31V vinyl chloride

(b) Acid compounds:

1A 2 chlorophenol
2A 2,4 dichlorophenol
3A 2,4 dimethylphenol
4A 4,6 dinitro o cresol
5A 2,4 dinitrophenol
6A 2 nitrophenol
7A 4 nitrophenol
8A p chloro m cresol
9A pentachlorophenol
10A phenol
11A 2,4,6 trichlorophenol

(c) Base/neutral:

1B acenaphthen
2B acenaphthylene
3B anthracene
4B benzidine
5B benzo(a)anthracene
6B benzo(a)pyrene
7B 3,4 benzofluoranthene
8B benzo(ghi)perylene
9B benzo(k)fluoranthene
10B bis(2 chloroethoxy)methane
11B bis(2 chloroethyl) ether
12B bis(2 chloroisopropyl) ether
13B bis(2 ethylhexyl)phthalate
14B 4 bromophenyl phenyl ether
15B butylbenzyl phthalate
16B 2 chloronaphthalene
17B 4 chlorophenyl phenyl ether
18B chrysene amine
19B dibenzo(a,h)anthracene
20B 1,2 dichlorobenzene
21B 1,3 dichlorobenzene
22B 1,4 dichlorobenzene
23B 3,3 dichlorobenzidine
24B diethyl phthalate
25B dimethyl phthalate
26B di n butyl phthalate
27B 2,4 dinitrotoluene
28B 2,6 dinitrotoluene
29B di n octyl phthalate
30B 1,2 diphenylhydrazine (as azobenzene)
31B fluoranthene
32B fluorene
33B hexachlorobenzene
34B hexachlorobutadiene
35B hexachlorocyclo pentadiene
36B hexachloroethane
37B indeno(1,2,3 cd) pyrene
38B isophorone
39B naphthalene
40B nitrobenzene
41B N nitrosodimethyl
42B N nitrosodi n propyl amine
43B N nitrosodiphenylamine
44B phenanthrene
45B pyrene
46B 1,2,4 trichloro benzene

(d) Pesticides:

1P aldrin
2P a BHC
3P b BHC
4P y BHC
5P d BHC
6P chlordane
7P 4,4' DDT
8P 4,4' DDE
9P 4,4' DDD
10P dieldrin
11P a endosulfan
12P b endosulfan
13P endosulfan sulfate
14P endrin
15P endrin aldehyde
16P heptachlor
17P heptachlor epoxide
18P PCB 1242
19P PCB 1254
20P PCB 1221
21P PCB 1232
22P PCB 1248
23P PCB 1260
24P PCB 1016
25P toxaphene

(3) Table III Other Toxic Pollutants: (Metals, Cyanide) and Total Phenols:

(a) antimony, total
(b) arsenic, total
(c) beryllium, total
(d) cadmium, total
(e) chromium, total
(f) copper, total
(g) lead, total
(h) mercury, total
(i) nickel, total
(j) selenium, total
(k) silver, total
(l) thallium, total
(m) zinc, total
(n) cyanide, total
(o) phenols, total

(4) Table IV Conventional and Nonconventional Pollutants Required to be Tested by Existing Dischargers if Expected to be Present:

(a) bromide
(b) chlorine, total residual
(c) color
(d) fecal coliform
(e) fluoride
(f) nitrate nitrite
(g) nitrogen, total organic
(h) oil and grease
(i) phosphorus, total
(j) radioactivity
(k) sulfate
(l) sulfide
(m) sulfite
(n) surfactants
(o) aluminum, total
(p) barium, total
(q) boron, total
(r) cobalt, total
(s) iron, total
(t) magnesium, total
(u) molybdenum, total
(v) manganese, total
(w) tin, total
(x) titanium, total

(5) Table V Toxic Pollutants and Hazardous Substances Required to be Identified by Existing Dischargers if Expected to be Present:

(a) Toxic pollutants asbestos;
(b) Hazardous substance:
1. acetaldehyde
2. allyl alcohol
3. allyl chloride
4. amyl acetate
5. aniline
6. benzonitrile
7. benzyl chloride
8. butyl acetate
9. butylamine
10. captan
11. carbaryl
12. carbofuran

13. carbon disulfide
14. chlorpyrifos
15. coumaphos
16. cresol
17. crotonaldehyde
18. cyclohexane
19. 2,4-D(2,4-dichlorophenoxy-acetic acid)
20. diazinon
21. dicamba
22. dichlobenil
23. dichlone
24. 2,2-dichloropropionic acid
25. dichlorvos
26. diethyl amine
27. dimethyl amine
28. dintrobenzene
29. diquat
30. disulfoton
31. diuron
32. epichlorohydrin
33. ethanolamine
34. ethion
35. ethylene diamine
36. ethylene dibromide
37. formaldehyde
38. furfural
39. guthion
40. isoprene
41. isopropanolamine
42. kelthane
43. kepone
44. malathion
45. mercaptodimethur
46. methoxychlor
47. methyl mercaptan
48. methyl methacrylate
49. methyl parathion
50. mevinphos
51. mexacarbate
52. monethyl amine
53. monomethyl amine
54. naled
55. napthenic acid
56. nitrotoluene
57. parathion
58. phenolsulfanate
59. phosgene
60. propargite
61. propylene oxide
62. pyrethrins
63. quinoline
64. resorcinol
65. strontium
66. strychnine
67. styrene
68. 2,4,5-T(2,4,5-trichlorophenoxy-acetic-acid)
69. TDE(tetrachlorodiphenylethane)
70. 2,4,5-TP (2, (2,4,5-trichlorophenoxy) propanoic acid)
71. trichlorofon
72. Triethylamine
73. trimethylamine
74. uranium
75. vanadium
76. vinyl acetate
77. xylene
78. xylenol
79. zirconium

Section 14. Application Requirements of Section 4(7)(b)1 of this Regulation Exempted for Certain Categories and Subcategories of Primary Industries. Categories of dischargers for which Section 4(7)(b)1 of this regulation is exempted for categories and subcategories of the primary industries listed in Section 10 of this regulation.

(1) Coal mines.

(2) Testing and reporting for all four (4) organic fractions in the Greige Mills Subcategory of the Textile Mills industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(3) Testing and reporting for the volatile, base/neutral, and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four (4) fractions in all other subcategories of this industrial category.

(4) Testing and reporting for all four (4) GC/MS fractions in the Porcelain Enameling industry.

(5) Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory and Rosin Based Derivatives Subcategory of the Gum and Wood Chemicals industry, and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

(6) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

(7) Testing and reporting for the acid, base/neutral, and pesticide fractions in the Petroleum Refining industrial category.

(8) Testing and reporting for the pesticide fraction in the Paper-grade Sulfite Subcategories of the Pulp Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Draft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral, and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semichemical, and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving Sulfite Pulp, Groundwood fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated tissue Papers.

(9) Testing and reporting for the base/neutral fraction in the Once-through Cooling Water, Fly Ash, and Bottom Ash Transport Water process waste streams of the Steam Electric Power Plant industrial category.

Section 15. Permit Testing Requirements for Exempted Categories and Subcategories of Primary Industries. For categories and subcategories of primary industries, the permit application testing requirements are as follows:

(1) Table I - Testing Requirements for Organic Toxic Pollutants by Industry Category:

Industrial category	GC/MS fraction[1]			
	Volatile	Acid	Base/ neutral	Pesticide
Adhesives and sealants	(*)	(*)	(*)	
Aluminum forming	(*)	(*)	(*)	
Auto and other laundries	(*)	(*)	(*)	(*)
Battery manufacturing	(*)		(*)	
Coal mining				
Coil coating	(*)	(*)	(*)	
Cooper forming	(*)	(*)	(*)	
Electric and electronic components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	
Explosives manufacturing		(*)	(*)	

Foundries	(*)	(*)	(*)	
Gum and wood (all except tall oil, rosin, and rosin based derivatives)	(*)	(*)		
Gum and wood (tall oil rosin)	(*)	(*)	(*)	
Gum and wood (rosin based derivatives)	(*)	(*)	(*)	
Inorganic chemicals manufacturing	(*)	(*)	(*)	
Iron and steel manufacturing	(*)	(*)	(*)	
Leather tanning and finishing	(*)	(*)	(*)	
Mechanical products manufacturing	(*)	(*)	(*)	
Nonferrous metals manufacturing	(*)	(*)	(*)	(*)
Ore mining (except base and precious metals)				
Ore mining (base and precious metals)			(*)	
Organic chemicals manufacturing	(,	(*)	(*)	(*)
Paint and ink formulation	(*)	(*)	(*)	
Pesticides	(*)	(*)	(*)	(*)
Petroleum refining	(*)			
Pharmaceutical preparations	(*)	(*)	(*)	
Photographic equipment and supplies	(*)	(*)	(*)	
Plastic and synthetic materials manufacturing	(*)	(*)	(*)	(*)
Plastic processing	(*)			
Porcelain enameling				
Printing and publishing	(*)	(*)	(*)	(*)
Pulp and paperboard mills[6]				
Rubber processing	(*)	(*)	(*)	
Soap and detergent manufacturing	(*)	(*)	(*)	
Steam electric power plants	(*)	(*)		
Textile mills (except for Greige Mills)	(*)	(*)	(*)	
Textile mills (Greige Mills)				
Timber products processing	(*)	(*)	(*)	(*)

*Testing required.
[†]The pollutants in each fraction are listed in Section 13(2), Table II, of this regulation.
[6]Pulp and paperboard mills are listed in paragraph (a) of this subsection.

(a) Pulp and paperboard mills:

GC/MS fraction[†]				
Vola	Acid	Base/Pesti	tile	neutral oide
Unbleached kraft	(*)	(*)		
Semichemical	(*)			
Unbleached kraft neutral sulfite semichemical	(*)			
Paperboard from wastepaper(*)	(*)	(*)		
Dissolving kraft(*)	(*)			
Market bleached kraft(*)	(*)			
BCT bleached kraft(*)	(*)			
Fine bleached kraft(*)	(*)			
Papergrade sulfite(*)	(*)	(*)		
Dissolving sulfite pulp(*)	(*)			
Groundwood chemi mechanical(*)	(*)			
Groundwood thermo mechanical(*)	(*)			
Groundwood CMN papers(*)	(*)			
Groundwood fine papers(*)	(*)			
Soda(*)	(*)			
Deink(*)	(*)	(*)		
Nonintegrated fine papers	(*)			
Nonintegrated tissue papers(*)	(*)	(*)		
Tissue from wastepaper(*)	(*)	(*)		
Papergrade sulfite(*)	(*)	(*)		
Unbleached kraft and semichemical(*)	(*)	(*)	(*)	
Wastepaper molded products(*)	(*)	(*)	(*)	
Nonintegrated light weight papers(*)	(*)	(*)	(*)	
Nonintegrated filter and nonwoven papers(*)	(*)	(*)	(*)	
Nonintegrated paper board(*)	(*)	(*)	(*)	

*Testing required.
Testing not required unless "reason to believe" it is discharged.
[†]The pollutants in each fraction are listed in Section 13(2), Table II, of this regulation.]

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: May 13, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this amended regulation has been scheduled for June 28, 1994, at 10 a.m. (eastern time), in the Auditorium of the State Office Building at Mero and High Streets in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by June 23, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard 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 amended regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of business (4:30 p.m., eastern time) on June 28, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion,

age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before June 23, 1994 between 8 a.m. and 4:30 p.m. (eastern time).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 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 regulation sets forth the application requirements for Kentucky Pollutant Discharge Elimination System (KPDES) permits. This regulations affects all wastewater dischargers in the Commonwealth, which represents over 9,300 facilities. The proposed changes to this regulation are for the following reasons: To conform to June 2, 1989; July 24, 1990; November 16, 1990; March 21, 1991; November 5, 1991; and April 2, 1992, federal regulations (40 CFR 122.21, 122.26, 122.27 and 122.6) which relate to general application requirements and storm water application requirements. All other changes are to correct cross-references or to update the KRS Chapter 13A requirements.

(a) Direct and indirect costs or savings to those affected: None. Any direct or indirect costs or savings would have occurred when the applicable federal regulations went into effect. This is because KPDES is a delegated federal permit program subject to federal requirements which is administered by the state of Kentucky.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There are no competitive impacts between states, because the federal regulations are applied nationwide.

(b) Reporting and paperwork requirements: None. Any change in reporting or paperwork would have occurred when the applicable federal regulations took effect.

(2) Effects on the promulgating administrative body: None. Any effects on the agency would have occurred when the federal regulations became effective.

(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. These changes will not impact state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Kentucky's KPDES delegation authority prohibits the use of provisions less stringent than what would be imposed by the federal agency. These regulations adopt the federal standards.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administration regulation or government policy conflicts, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No regulation conflicts.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: These changes are being made to address modifications to the federal regulations which need to be incorporated into state regulations. This is necessary to maintain delegation of the NPDES permit program.

TIERING: Was tiering applied? Yes. To the extent that the original federal regulation changes provided for tiering, these administrative regulation changes are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

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 regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to any local government unit which operates facilities that discharge to waters of the Commonwealth.

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. None, because any impact on the expenditures and revenues of a local government would have occurred when the applicable federal regulation took effect. This may have led local governments to take actions (increase taxes or increase fees) to comply with the new federal regulations.

Revenues (+/-): None
Expenditures (+/-): None
Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate on Kentucky to adopt this regulation. For Kentucky to maintain its delegation of authority over NPDES these amendments are being made. This involves the following federal regulations: 40 CFR 122.21, 122.26, 125.273 and 122.6.

2. State compliance standards. The entire regulation will be modified to incorporate without change new federal requirements for wastewater permit applications including specific requirements for storm water applications.

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards being proposed for this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:065. KPDES permit conditions.

RELATES TO: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 224.99-010

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 further empowers the cabinet to issue federal permits pursuant to 33 USC Section 1342(b)

of the Federal Water Pollution Control Act (33 USC Section 1251 et seq.) subject to the conditions imposed in 33 USC Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This administrative regulation sets forth the conditions applicable to all KPDES permits and the procedures for establishing and calculating permit conditions.

Section 1. Conditions Applicable to all KPDES Permits. All conditions applicable to KPDES permits shall [~~will~~] be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these administrative regulations shall [~~must~~] be given in the permit. In addition to conditions required in all KPDES permits, the cabinet shall [~~director will~~] establish conditions as required on a case-by-case basis under Section 2 of this administrative regulation and 401 KAR 5:070.

(1) Duty to comply.

(a) General requirement. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224, among which are the following remedies: enforcement action, permit revocation [~~termination~~], revocation and reissuance, or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions established under 40 CFR Part 129 [~~revised~~] as of July 1, 1991 [~~1986~~], as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, [~~is hereby incorporated by reference,~~] for toxic pollutants within the time provided in the federal regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Any person who violates a permit condition as set forth in the KPDES administrative regulations is subject to penalties under KRS 224.99-010(1) and (4).

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit as required in 401 KAR 5:060, Section 1.

(3) Need to halt or reduce activity not a defense. 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 with the conditions of this permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit actions. The permit may be modified, revoked and reissued, or revoked [~~terminated~~] for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or revocation [~~termination~~], or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the cabinet [~~director~~], within a reasonable time, any information which the cabinet [~~director~~] may request to determine whether cause exists for modifying, revoking and reissuing, or revoking [~~terminating~~] this permit, or to determine compliance with this permit. The permittee shall also furnish to the cabinet [~~director~~], upon request, copies of records required to be kept by this permit.

(9) Inspection and entry. The permittee shall allow the cabinet [~~director~~], or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records pertinent to the KPDES program are or may be kept;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring KPDES program compliance or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet [~~director~~] at any time.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individuals [~~(s)~~] who performed the sampling or measurements;

3. The dates [~~(s)~~] analyses were performed;

4. The individuals [~~(s)~~] who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of the [~~such~~] analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.

(e) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be subject to penalties under KRS 224.99-010(4).

(11) Signatory requirement. All applications, reports, or information submitted to the cabinet [~~director~~] shall be signed and certified as indicated in 401 KAR 5:060, Section 9 [~~3~~]. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.99-010(4).

(12) Reporting requirements.

(a) Planned changes. The permittee shall give notice to the cabinet [~~director~~] as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in 401 KAR 5:080, Section 5; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject either [~~neither~~] to effluent limitations in the permit, or [~~nor~~] to notification requirements under 401 KAR 5:080, Section 5.

(b) Anticipated noncompliance. The permittee shall give advance notice to the cabinet [~~director~~] of any planned changes in the

permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the cabinet [director]. The cabinet [director] may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS Chapter 224.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit. Monitoring results shall be reported as follows:

1. Monitoring results shall [must] be reported on a Discharge Monitoring Report (DMR).

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data [date] submitted in the DMR.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the cabinet [director] in the permit.

(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

(f) Twenty-four (24) hour reporting. The permittee shall follow the provisions of 401 KAR 5:015 and shall orally report any noncompliance which may endanger health or the environment, within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. This report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The cabinet [director] may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours. The following shall be included as events which shall [must] be reported within twenty-four (24) hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in subsection (13) of this section.

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the cabinet [director] in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of this administrative regulation.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this subsection, when [at the time] monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this subsection.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in a permit application or in any report to the cabinet [director], it shall promptly submit these [such] facts or information.

(13) Occurrence of a bypass.

[~~(a) Definitions.~~

~~1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.~~

~~2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.~~]

(a) [~~(b)~~] Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. This type of bypass is not subject to the provisions of paragraphs (b) and (c) [~~and (d)~~] of this subsection.

(b) [~~(c)~~] Notice.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 1.

2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in [~~paragraph (f) of~~] subsection (12)(f) of this section, twenty-four (24) hour notice. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 4.

(c) [~~(d)~~] Prohibition of a bypass.

1. Bypassing is prohibited, and the cabinet [director] may take enforcement action against a permittee for bypass, unless:

a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and [;]

c. The permittee submitted notices as required under paragraph (b) [~~(c)~~] of this subsection.

2. The cabinet [director] may approve an anticipated bypass, after considering its adverse effects, if the cabinet [director] determines that it will meet the three (3) conditions listed in subparagraph 1a, b, and c of this paragraph.

(14) Occurrence of an upset.

[~~(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.~~]

(a) [~~(b)~~] Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with [~~such~~] technology-based permit effluent limitations if the requirements of paragraph (b) [~~(c)~~] of this subsection are met.

(b) [~~(c)~~] Conditions necessary for a demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or [~~of~~] other relevant evidence that:

1. An upset occurred and that the permittee can identify the causes [~~(s)~~] of the upset;

2. The permitted facility was at the time being properly operated;

3. The permittee submitted notice of the upset as required in [~~paragraph (f) of~~] subsection (12)(f) of this section; and

4. The permittee complied with any remedial measures required under subsection (4) of this section.

(c) [~~(d)~~] Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional conditions applicable to specified categories of KPDES permits. The following conditions, in addition to others set forth in this administrative regulation, apply to all KPDES permits within the categories specified below:

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under subsec-

tions (12), (13), and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the cabinet [director] as soon as it knows or has reason to know [believe]:

1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

a. 100 micrograms per liter (100 ug/l [mg/1]);

b. 200 micrograms per liter (200 ug/l [mg/1]) for acrolein and acrylonitrile; 500 micrograms per liter (500 ug/l [mg/1]) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter (1 mg/1) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2 [4](7);

d. The level established by the cabinet [director] in accordance with Section 2(6)[2] of this administrative regulation.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

a. 500 micrograms per liter (500 ug/l);

b. One (1) milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2 [4](7); or

d. The level established by the cabinet [director] in accordance with Section 2(6) of this administrative regulation.

(b) POTWs.

1. POTWs shall provide adequate notice to the cabinet [director] of the following:

a. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the KPDES administrative regulations if it were directly discharging those pollutants; or [and]

b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

2. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTWs and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

Section 2. Establishing Permit Conditions. For the purpose of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 401 KAR 5:070, Section 6. New or reissued permits, and to the extent allowed under 401 KAR 5:070, Section 6 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under Section 1 of this administrative regulation each KPDES permit shall [will] include conditions meeting the following requirements as applicable.

(1) Technology-based effluent limitations and standards; new source performance standards; and pretreatment requirements and standards, as required by 40 CFR Chapter I, Subchapter N (Part 401 et seq.), adopted without change [are incorporated by reference as specified] in Section 4 of this administrative regulation, or case-by-case effluent limitations and standards and pretreatment requirements or based on a combination of those standards in accordance with 401 KAR 5:080, Section 1(2) shall [will] be included, as applicable.

(2) Other effluent limitations and standards of KRS Chapter 224 shall be included as applicable. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in the [such] effluent standard or prohibition, is promulgated by EPA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the cabinet shall [director will] institute proceedings under these administrative regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener clause. For any discharger within a primary industry category, as listed in [401 KAR 5:060,] Section 4(2) of this administrative regulation [10,] requirements under the KPDES administrative regulations shall [will] be incorporated as applicable, as follows:

(a) On or before June 30, 1981.

1. If applicable standards or limitations have not yet been promulgated, the permit shall [will] include a condition stating that if an applicable standard or limitation is promulgated by EPA and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall [will] be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit shall [will] include those standards or limitations.

(b) After June 30, 1981, any permit issued shall [will] include effluent limitations and a compliance schedule to meet the applicable requirements indicated in Section 1(1)(b) of this administrative regulation, whether or not applicable effluent limitations guidelines have been promulgated or approved by EPA. These permits need not incorporate the reopener clause required by paragraph (a) of this subsection.

(c) The cabinet shall [director will] promptly modify or revoke and reissue any permit containing the clause required under paragraph (a) of this subsection to incorporate an applicable EPA effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitations guidelines or standards shall [will] be included, when necessary to:

(a) Achieve water quality standards established under KRS Chapter 224 and administrative regulations promulgated pursuant thereto, including any narrative criteria contained in 401 KAR 5:031. [;]

1. Limitations shall control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the cabinet determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria for water quality.

2. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the cabinet shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing, when evaluating whole effluent toxicity, and where appropriate, the dilution of the effluent in the receiving water.

3. When the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a numeric criteria within a water quality standard for an individual pollutant, the permit shall contain effluent limits for that pollutant.

4. When the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit shall contain effluent limits for whole effluent toxicity.

5. Except as provided in this subparagraph, when the cabinet

determines, using the procedures in subparagraph 2 of this paragraph, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit shall contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the cabinet demonstrates in the fact sheet or statement of basis of the KPDES permit, using the procedures in subparagraph 2 of this paragraph, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality standards.

6. If 401 KAR 5:031 does not specify a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable water quality standard, the cabinet shall establish effluent limits using one (1) or more or the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the cabinet demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using administrative regulation interpreting the narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, September 1993, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

b. Establish effluent limits on a case-by-case basis, using water quality criteria listed in 401 KAR 5:031, supplemented where necessary by other relevant information; or

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, if:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(ii) The fact sheet required by 401 KAR 5:075 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(iv) The permit contains a reopener clause allowing the cabinet to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. When developing water quality-based effluent limits under this paragraph the cabinet shall ensure that:

a. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the cabinet;

(b) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of CWA (33 USC Section 1312);

(c) Conform to applicable water quality requirements when the discharge affects a state other than Kentucky;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or administrative regulations in accordance with Section 301(b)(1)(c) of CWA (33 USC Section 1311(b)(1)c).

(e) Ensure consistency with the requirements of any Kentucky Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 401 KAR 5:080, Section 3.

(5) Toxic pollutants. Limitations established under subsections (1), (2) or (4) of this section, to control pollutants meeting the criteria listed in paragraph (a) of this subsection shall [will] be included in the permit, if applicable. Limitations shall [will] be established in accordance with paragraph (b) of this subsection. An explanation of the development of these limitations shall [will] be included in the fact sheet under 401 KAR 5:075, Section 4.

(a) Limitations shall [will] control all toxic pollutants which:

1. The cabinet [~~director~~] determines, based on information reported in a permit application under 401 KAR 5:060, Section 2(7) [~~4(7) or (11)~~], or in a notification under Section 1(15)(a) of this administrative regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c); or

2. The discharger does or may use or manufacture as an intermediate or final product or by-product.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection shall [will] be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the cabinet [~~director~~], will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by 401 KAR 5:080, Section 1(2)(c).

(6) Notification level. A "notification level" which exceeds the notification level of Section 1(15)(a)1a,b, or c of this administrative regulation, upon a petition from the permittee or on the cabinet's [~~director's~~] initiative shall [will] be incorporated as a permit condition, if applicable. This new notification level shall [~~may~~] not exceed the level which can be achieved by the technology-based treatment requirements appropriated to the permittee under 401 KAR 5:080, Section 1(2)(c).

(7) Twenty-four (24) hour reporting. Pollutants for which the permittee shall [will] report violations of maximum daily discharge limitations under Section 1 [~~3~~](12)(~~i~~) of this administrative regulation (twenty-four (24) hour reporting) shall be listed as such in the permit. This list shall [will] include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring requirements. The permit shall [will] incorporate, as applicable in addition to Section 1(12) of this administrative regulation, the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor:

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall; and

3. Other measurements as appropriate; including pollutants in internal waste streams under Section 3(8) of this administrative regulation; frequency, rate of discharge, etc., for noncontinuous discharges under Section 3(5) of this administrative regulation; and pollutants subject to notification requirements under Section 1(15)(a) of this administrative regulation.

(b) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(c) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but not [~~in no case~~] less than once a year with the following exceptions:

1. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case

basis with a frequency dependent on the nature and effect of the discharge, but not less than once a year.

2. Requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in subparagraph 1 of this paragraph shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge shall require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. The report and certification be signed in accordance with 401 KAR 5:060, Section 9; and

d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three (3) years by a professional engineer that the facility is in compliance with the permit, or alternative requirements.

3. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under Section 1(12)(g) of this administrative regulation at least annually.

(9) Pretreatment program for POTWs. If applicable to the facility the permit shall [~~will~~] incorporate as a permit condition requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the KPDES administrative regulations.

(b) Submit a local program when required by and in accordance with 401 KAR 5:057 [~~5:055, Section 9~~], to assure compliance with pretreatment standards to the extent applicable in the KPDES administrative regulations. The local program shall [~~will~~] be incorporated into the permit as described in 401 KAR 5:057 [~~5:055, Section 9~~]. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Applicable under KRS Chapter 224 and the KPDES administrative regulations for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible; or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of KRS Chapter 224.

(11) Reissued permits.

(a) The permit shall [~~will~~] include a condition concerning reissued permits, as applicable. When a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as any final limitations, standards, or conditions in the previous permit shall [~~will~~] be incorporated unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 401 KAR 5:070, Section 6. [~~This requirement applies to these permits which were issued pursuant to CWA Section 402(a)(1) (33 USC Section 1242(a)(1)), unless one (1) of the following exceptions apply:~~]

(b) For effluent limitations established on the basis of 401 KAR 5:080, Section 1(2)(c)2, a permit shall not be renewed, revoked and reissued, or modified on the basis of effluent guidelines promulgated under CWA Section 304(b) subsequent to the original issuance of the permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

1. Exceptions. A permit to which paragraph (a) of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. Information is available which was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and which would have justified the application of a less stringent effluent limitation at the time of permit issuance;

c. The cabinet determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under 401 KAR 5:080, Section 1(2)(c)2;

d. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

e. The permittee has received a permit modification under 401 KAR 5:055, Section 3; or

f. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification.

2. Limitations. A permit to which paragraph (a) of this subsection applies shall not be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect when the permit is renewed, reissued, or modified. Such a permit to discharge into waters shall not be renewed, issued, or modified to contain less stringent effluent limitation if the implementation of the limitation would result in a violation of a water quality standard under 401 KAR 5:031 applicable to those waters.

[~~(a) If the discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved, but will not be less stringent than required by the subsequently promulgated effluent limitations guidelines;~~

~~(b) If the subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (BCT);~~

~~(c) If the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 401 KAR 5:070, Section 6;~~

~~(d) If there is increased production at the facility which results in significant reduction in treatment efficiency, then the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event will permit limitations be less stringent than those required by subsequently promulgated standards and limitations.~~]

(12) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited copermittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this administrative regulation shall [~~will~~] be imposed as applicable. Alternatively, the cabinet [~~director~~] may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The cabinet's [~~director's~~] decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate

permits or to require separate applications, and the basis for that decision shall [will] be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants made by the cabinet [director] to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations shall [will] be required as applicable.

(14) Sewage sludge. Requirements shall [will] be imposed, as applicable, governing the disposal of sewage sludge from publicly owned treatment works, in accordance with 40 CFR Part 503 [401 KAR 47:050].

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit shall [will] be conditioned as applicable. A condition that the discharge shall comply with any applicable federal regulations promulgated by the secretary of the department in which the Coast Guard is operating which establish specifications for safe transportation, handling, carriage, and storage of pollutants shall be imposed if applicable.

(16) Navigation. Any conditions that the Secretary of the United States Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 401 KAR 5:075, Section 9, shall [will] be included as applicable.

(17) Duration of permits shall be imposed, as set forth in 401 KAR 5:070, Section 1.

Section 3. Calculating KPDES Permit Conditions. The following provisions shall [will] be used to calculate terms and conditions of the KPDES permit.

(1) Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions shall [will] be established for each outfall or discharge point of the permitted facility, except as otherwise provided: under Section 2(10) of this administrative regulation; with BMPs where limitations are infeasible; and under subsection (8) of this section, limitations on internal waste streams.

(2) Production-based limitations.

(a) In the case of POTWs, permit limitations, standards, or prohibitions shall [will] be calculated based on design flow.

(b)1. Except in the case of POTWs or as provided in subparagraph 2a(ii) of this paragraph, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

2.a.(i) The cabinet [director] may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(ii) For the automotive manufacturing industry only, the cabinet [director] may establish a condition under subparagraph 2a(i) of this paragraph if the applicant satisfactorily demonstrates to the cabinet [director] at the time the application is submitted that its actual production, as indicated in subparagraph 2a(i) of this paragraph, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

b. If the cabinet [director] establishes permit conditions under subparagraph 2a(i) of this paragraph:

(i) The permit shall require the permittee to notify the cabinet [director] at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(ii) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the cabinet [director] under subparagraph 2b of this paragraph, then [in which case] the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(iii) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as described [defined] in 40 CFR Part 136 unless:

(a) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; [or]

(b) In establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1(2), it is necessary to express the limitation on the metal in the dissolved or valent total form to carry out the provisions of KRS 224.16-050; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(4) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable shall [will] be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Noncontinuous discharges. Discharges which are not continuous, as defined in 401 KAR 5:001 [5:050, Section 1(7)], shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency: for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass: for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge: for example, not to exceed two (2) kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure: for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge.

(6) Mass limitations.

(a) All pollutant limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If in establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, for example, discharges of TSS from certain mining operations, and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall [will] require the permittee to comply with both limitations.

(7) Pollutants in intake water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in 40 CFR Chapter I, Subchapter N, Part 401 et seq., specifically provide that they may be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) shall not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitations or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The cabinet [~~director~~] may waive this requirement if the cabinet [~~director~~] finds that no environmental degradation will result.

(e) This subsection shall [~~of this regulation does~~] not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal waste streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(8) of this administrative regulation shall also be applied to the internal waste streams.

(b) Limits on internal waste streams shall [~~will~~] be imposed only when the fact sheet under 401 KAR 5:075, Section 4, sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under ten (10) meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of pollutants into wells, into POTWs, or by land application. Permit limitations and standards shall be calculated as provided in 401 KAR 5:055, Section 6.

(10) Secondary treatment information. Permit conditions that involve secondary treatment shall [~~will~~] be written as provided in 401 KAR 5:045.

Section 4. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are published by the Office of the Federal Register, National Archives and Government Services, General Services Administration, and are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(1) Toxic Pollutant Effluent Standards, 40 CFR Part 129, revised as of July 1, 1991;

(2) Test Procedures for the Analysis of Pollutants, 40 CFR Part 136, revised as of September 11, 1992;

(3) Federal Effluent Limitations and Standards and New Source Performance Standards. [~~Incorporations. (1)~~] 40 CFR Chapter I, Subchapter N, Parts 401 et seq., revised as of July 1, 1993; and

(4) Standards for the Use or Disposal of Sewage Sludge, 40 CFR Part 503, revised as of July 1993. [~~1986, as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference.~~

~~(2) Federal Registers incorporated. In addition to subsection (1) of this section, also incorporated by reference are additions, amendments and corrections to this codification, as published in the following Federal Registers:~~

~~Industry~~	~~40 CFR Part~~	~~Federal Register~~	~~Date~~
~~Aluminum Forming~~	~~467~~	~~48 FR 49126~~	~~10-24-83~~
		~~corrected by~~	
		~~49 FR 11629~~	~~03-27-84~~
~~Battery Manufacturing~~	~~461~~	~~49 FR 9108~~	~~03-09-84~~
		~~corrected by~~	
		~~49 FR 13879~~	~~04-09-84~~
		~~corrected by~~	
		~~49 FR 27946~~	~~07-09-84~~
~~Coal mining~~	~~434~~	~~47 FR 45382~~	~~10-13-82~~
		~~corrected by~~	
		~~48 FR 50321~~	~~11-01-83~~
		~~amended by~~	
		~~50 FR 41296~~	~~10-09-85~~
~~Coil coating (Phase I)~~	~~465~~	~~47 FR 54232~~	~~12-01-82~~
		~~amended by~~	
		~~48 FR 31403~~	~~07-08-83~~
		~~amended by~~	
		~~48 FR 41409~~	~~09-15-83~~
		~~corrected by~~	
		~~49 FR 33648~~	~~08-24-84~~
~~(Phase II, Can making)~~	~~465~~	~~48 FR 52380~~	~~11-17-83~~
		~~amended by~~	
		~~48 FR 31403~~	~~07-08-83~~
		~~corrected by~~	
		~~49 FR 14104~~	~~04-10-84~~
~~Copper Forming~~	~~468~~	~~48 FR 36942~~	~~08-15-83~~
		~~amended by~~	
		~~48 FR 41409~~	~~09-15-83~~
		~~amended by~~	
		~~50 FR 34242~~	~~08-23-85~~
		~~amended by~~	
		~~51 FR 7568~~	~~03-05-86~~
~~Electrical/Electronic Components (Phase 1)~~	~~469~~	~~48 FR 15382~~	~~04-08-83~~
		~~amended by~~	
		~~49 FR 5921~~	~~02-16-84~~
~~(Phase II)~~	~~469~~	~~48 FR 55690~~	~~12-14-83~~
		~~corrected by~~	
		~~49 FR 1056~~	~~01-09-84~~
~~Electroplating (Pretreatment)~~	~~413~~	~~44 FR 52590~~	~~09-07-79~~
		~~amended by~~	
		~~48 FR 32462~~	~~07-15-83~~
		~~corrected by~~	
		~~48 FR 41409~~	~~09-15-83~~
		~~48 FR 43680~~	~~09-26-83~~
		~~amended by~~	
~~Inorganic Chemicals (Phase 1)~~	~~415~~	~~47 FR 28260~~	~~06-29-82~~
		~~amended by~~	
		~~47 FR 55226~~	~~12-08-82~~

~~(Phase II) 415 49 FR 33402 08-22-84 corrected by 49 FR 37594 09-25-84~~

~~Iron & Steel Manufacturing 420 47 FR 23258 05-27-82 corrected by 47 FR 24554 06-07-82 corrected by 47 FR 41738 09-22-82 corrected by 48 FR 51773 11-14-83 amended by 49 FR 21024 05-17-84 corrected by 49 FR 24726 06-15-84 corrected by 49 FR 25634 06-22-84~~

~~Leather tanning and finishing 425 47 FR 52848 11-23-82 amended by 48 FR 30115 06-30-83 amended by 48 FR 31403 07-08-83 corrected by 48 FR 32346 07-15-83 corrected by 48 FR 35649 08-05-83 amended by 48 FR 41409 09-15-83~~

~~Metal Finishing 433 413 48 FR 32462 07-15-83 amended by 48 FR 41409 09-15-83 corrected by 48 FR 43680 09-26-83~~

~~Metal Molding and Casting 464 50 FR 45212 10-30-85~~

~~Nonferrous Metals (Phase I) 421 49 FR 8742 03-08-84 corrected by 49 FR 26738 06-29-84 corrected by 49 FR 29792 07-24-84 corrected by 50 FR 12252 03-28-85 amended by 50 FR 38276 09-02-85 corrected by 50 FR 41144 10-09-85 corrected by 50 FR 52775 12-26-85~~

~~(Phase III) 471 50 FR 34242 08-23-85 corrected by 51 FR 2884 01-22-86~~

~~Oil and Gas Extraction 435 41 FR 44942 10-13-76 amended by 44 FR 22069 04-13-79 amended by 47 FR 31554 07-21-82~~

~~Ore mining 440 47 FR 54598 12/03/82~~

~~Pesticides 455 50 FR 40672 10-04-85~~

~~Petroleum refining 419 47 FR 46434 10-18-82 amended by 50 FR 28516 07-12-85 corrected by 50 FR 32414 08-12-85~~

~~Pharmaceuticals 439 48 FR 49808 10-27-83 corrected by 48 FR 50322 11-01-83 amended by 50 FR 18486 05-01-85~~

~~Plastics 463 49 FR 49026 12-17-84 corrected by 50 FR 18248 04-30-85~~

~~Porcelain enameling 466 47 FR 53172 11-24-82 amended by 48 FR 31403 07-08-83 amended by 48 FR 41409 09-15-83~~

~~Pulp and paper 430 431 47 FR 52006 11-18-82 corrected by 48 FR 13176 03-30-83 amended by 48 FR 31403 07-08-83~~

~~Steam electric 423 47 FR 52290 11-19-82 amended by 48 FR 31403 07-08-83~~

~~Textile mills 410 47 FR 33810 09-02-82 corrected by 48 FR 39624 09-01-83~~

~~Timber 429 46 FR 8260 01-26-81 amended by 46 FR 57287 11-23-81]~~

Section 5. Primary Industry Categories. Any KPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the KPDES administrative regulations whether or not applicable effluent limitations guidelines have been promulgated.

(a) Adhesives and sealants.
(b) Aluminum forming.
(c) Auto and other laundries.
(d) Battery manufacturing.
(e) Coal mining.
(f) Oil coating.
(g Copper forming.
(h) Electrical and electronic components.
(i) Electroplating.
(j) Explosives manufacturing.
(k) Foundries.
(l) Gum and wood chemicals.
(m) Inorganic chemicals manufacturing.
(n) Iron and steel manufacturing.
(o) Leather tanning and finishing.
(p) Mechanical products manufacturing.
(q) Nonferrous metals manufacturing.
(r) Ore mining.
(s) Organic chemicals manufacturing.
(t) Paint and ink formulation.
(u) Pesticides.
(v) Petroleum refining.
(w) Pharmaceutical preparations.
(x) Photographic equipment and supplies.
(y) Plastics processing.
(z) Plastic and synthetic materials manufacturing.
(aa) Porcelain enameling.
(bb) Printing and publishing.
(cc) Pulp and paper mills.
(dd) Rubber processing.
(ee) Soap and detergent manufacturing.
(ff) Steam electric power plants.
(gg) Textile mills.
(hh) Timber products processing.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this amended regulation has been scheduled for June 28, 1994, at 10 a.m. (eastern time), in the Auditorium of the State Office Building at Mero and High Streets in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by June 23, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard 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 amended regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of business (4:30 p.m., eastern time) on June 28, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before June 23, 1994 between 8 a.m. and 4:30 p.m. (eastern time).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 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 regulation sets forth the conditions applicable to all Kentucky Pollutant Discharge Elimination System (KPDES) permit and procedures for establishing and calculating permit conditions. This regulation affects all wastewater dischargers in the Commonwealth, which represents over 9300 facilities. The proposed changes to this regulation are for the following reasons: Section 1 changes are due to the deletion of definitions which are being moved to 401 KAR 5:001. Section 2 changes are due to January 4, 1989, June 2, 1989, and July 24, 1992, federal regulations (40 CFR 122.44). This section deals with establishing permit conditions. Section 4 changes are due to federal regulation revisions to Effluent Guidelines (40 CFR Chapter I, Subchapter N updated to July 1, 1993). All other changes are to correct cross-references or to update to KRS Chapter 13A requirements.

(a) Direct and indirect costs or savings to those affected: None. Any direct or indirect costs or savings would have occurred when the applicable federal regulations went into effect. This is because KPDES is a delegated federal permit program subject to federal requirements which is administered by the state of Kentucky.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There are no competitive impacts between states, because the federal regulations are applied nationwide.

(b) Reporting and paperwork requirements: None. Any change in reporting or paperwork would have occurred when the applicable federal regulations took effect.

(2) Effects on the promulgating administrative body: None. Any effects on the agency would have occurred when the federal regulations became effective.

(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. These changes will not impact state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Kentucky's KPDES delegation authority prohibits the use of provisions less stringent than what would be imposed by the federal agency. These regulations adopt the federal standards.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administration regulation or government policy conflicts, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No regulation conflicts.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: These changes are being made to address modifications to the federal regulations which need to be incorporated into state regulations. This is necessary to maintain delegation of the NPDES permit program.

TIERING: Was tiering applied? Yes. To the extent that the original federal regulation changes provided for tiering, these administrative regulation changes are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

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 regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to any local government unit which operates facilities that discharge to waters of the Commonwealth.

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. None, because any impact on the expenditures and revenues of a local government would have occurred when the applicable federal regulation took effect. This may have led local governments to take actions (increase taxes or increase fees) to comply with the new federal regulations.

Revenues (+/-): None
Expenditures (+/-): None
Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate on Kentucky to adopt this regulation. For Kentucky to maintain its delegation of authority over NPDES these amendments are being made. This involves the following federal regulations: 40 CFR Chapter I, Subchapter N, Parts 401 et. seq. (Effluent Guidelines).

2. State compliance standards. The following parts of this regulation are being modified to match the referenced federal requirements: Section 2 (establishing permit conditions) and Section 4 (Effluent Guidelines for each industrial category).

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards being proposed for this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:070. Provisions of the KPDES permit.

RELATES TO: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100

NECESSITY AND FUNCTION: KRS 224.16-050(1) provides that the Natural Resources and Environmental Protection Cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251 et seq.) subject to the conditions imposed in 33 USC Sections 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of NPDES permits shall be pursuant to 33 USC Sections 1311, 1312, and 1326(a). Further, KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this section any effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This administrative regulation contains the basis for provisions, terms, and effect of a KPDES permit, including permit duration, schedule of compliance, and basis for permit modification or [,] revocation and reissuance.

Section 1. Duration of Permits. (1) KPDES permits shall [will] be effective for a fixed term not to exceed five (5) years. Except as provided in 401 KAR 5:060, Section 1(5)(c) [(4)(b)], the term of a permit shall [will] not be extended by modification beyond this maximum duration. The cabinet [director] may issue a permit for a duration that is less than the full five (5) year term.

(2) A permit may be issued for the full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of 401 KAR 5:080, Section 1(2)[2c, d, and e,] whether or not applicable federal effluent limitations guidelines have been promulgated or approved.

Section 2. Schedules of Compliance. (1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(a) Time for compliance. Any schedules of compliance under this section shall [will] require compliance as soon as possible. In addition, schedules of compliance shall [will] require compliance not later than the applicable deadline specified in 401 KAR 5:080.

(b) The first KPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three (3) years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three (3) years before recommencement of discharge.

(c) Interim dates. Except as provided in subsection (2)(a)2 of this section, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall [will] set forth interim requirements and the dates for their achievement.

1. The time between interim dates shall [will] not exceed one (1) year.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit shall [will] specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit shall [will] be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the cabinet [director] in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative schedules of compliance. A KPDES permit applicant or permittee may cease conducting regulated activities, by revocation [termination] of direct discharge for KPDES sources, rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the revocation [termination] date, the permit shall [will] contain a schedule leading to revocation [termination] which shall [will] ensure timely compliance no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the cabinet shall [director may] issue or modify a permit to contain two (2) schedules as follows:

1. Both schedules shall [will] contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One (1) schedule shall [will] lead to timely compliance no later than the deadline contained in 401 KAR 5:080;

3. The second schedule shall [will] lead to cessation of regulated activities by a date which shall [will] ensure timely compliance no later than the deadline specified in 401 KAR 5:080; and

4. Each permit containing two (2) schedules shall [will] include a requirement that after the permittee has made a final decision under subparagraph 1 of this paragraph it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to revocation [termination] if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the cabinet [director], such as a resolution of the board of directors of a corporation.

Section 3. Requirements for Recording and Reporting of Monitoring Results. All permits shall [will] specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored

activity including, when appropriate, continuous monitoring; and

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in 401 KAR 5:065, Sections 1 and 2. Reporting shall be no less frequent than specified in Section 2 of this administrative regulation.

Section 4. Effect of a Permit. (1) Except for any toxic effluent standards and prohibitions included in 401 KAR 5:065, Section 1(1)(b), compliance with a KPDES permit during its term constitutes compliance, for purposes of enforcement, with the KPDES program. However, a permit may be modified, revoked and reissued, or revoked [~~terminated~~] during its term for cause as set forth in Sections 6 and 7 of this administrative regulation.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or administrative regulations.

Section 5. Transfer of Permits. (1) Transfers by modification. Except as provided in subsection (2) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under Section 6 of this administrative regulation, or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the KPDES administrative regulations.

(2) Automatic transfers. As an alternative to transfers under subsection (1) of this section, any KPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the cabinet [~~director~~] at least thirty (30) days in advance of the proposed transfer date in paragraph (b) of this subsection;

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and [~~.~~]

(c) The cabinet [~~director~~] does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under Section 6(3) of this administrative regulation. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b) of this subsection.

[~~(3) If a new KPDES permit is prepared as a result of either subsection (1) or (2) of this section, then the new permittee shall be subject to the "duplicate permit fee" as specified in 401 KAR 5:085, Section 5.~~]

Section 6. Modification or Revocation and Reissuance of Permit. When the cabinet [~~director~~] receives any information, the cabinet [~~director~~] may determine whether or not one (1) or more of the causes, listed in subsections (1) and (2) of this section for modification or revocation and reissuance or both, exist. If cause exists, the cabinet [~~director~~] may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the cabinet [~~director~~] shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in subsection (3) of this section for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall [~~must~~] be prepared and other procedures in 401 KAR 5:075 shall [~~must~~] be followed.

(1) Causes for modification. The following are causes for modification but not revocation and reissuance of permits unless the permittee agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, the [~~such~~] alterations may justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. If the cabinet [~~director~~] has received information, cause may exist for modification. KPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, except for revised administrative regulations, guidance, or test methods which would have justified application of different conditions at the time of permit issuance. In addition, the applicant shall [~~must~~] show that the information would have justified the application of different permit conditions at the time of issuance. For KPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New administrative regulations. If the standards or administrative regulations on which the permit was based have been changed by promulgation of amended standards or administrative regulations or by judicial decision after the permit was issued, then cause may exist for modification. However, the permit shall [~~may~~] be modified only as follows:

1. For promulgation of amended standards or administrative regulations, when:

a. The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards of 401 KAR 5:031, or the secondary treatment administrative regulations of 401 KAR 5:045;

b. EPA has revised, withdrawn, or modified that portion of the federal regulation or effluent limitation guideline or has approved a cabinet action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with 401 KAR 5:075, Section 2, within ninety (90) days after the amendment, revision, or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated effluent limitation guidelines, if the remand and stay concern that portion of the guidelines on which the permit condition was based and a request is filed by the permittee in accordance with 401 KAR 5:075, Section 2, within ninety (90) days of judicial remand.

(d) Compliance schedules. A permit may be modified if the cabinet [~~director~~] determines good cause exists for modification of a compliance schedule, based on an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, [~~in no case will~~] a KPDES compliance schedule shall not be modified to extend beyond an applicable statutory deadline in 401 KAR 5:080.

(e) In addition the cabinet [~~director~~] may modify a permit:

1. When the permittee has filed a request for any variance under 401 KAR 5:055, Section 7, or [~~for "fundamentally different factors" within the time specified in~~] 401 KAR 5:080, Section 3, and the cabinet [~~director~~] processes the request under the applicable provisions.

2. When required to incorporate [~~as~~] applicable toxic effluent standard or prohibition under 401 KAR 5:065, Section 2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under 401 KAR 5:065, Section 2(3), for toxic effluent limitations, or 401 KAR 5:065, Section 2 (40 CFR Section 403.10(e), pretreatment program).

4. Upon request of a permittee who qualifies for a change in effluent limitations based on pollutants in intake water under 401 KAR 5:065, Section 3(7).

5. When a discharger is no longer eligible for net limitations, as provided in 401 KAR 5:065, Section 3(7).

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c).

8. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or by-product any toxic pollutant which was not reported in the permit application under 401 KAR 5:060, Section 2 [4].

9. To establish a "notification level" as provided in 401 KAR 5:065, Section 2(6).

10. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility, in the case of the POTW which has received a grant under CWA Section 202(a)(3) (33 USC Section 1282(a)(3)) for 100 percent of the cost to modify or replace facilities constructed with a grant for innovative or alternative wastewater technology under CWA Section 202(a)(2) (33 USC Section 1282(a)(2)). In no case shall [will] the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance indicated in 401 KAR 5:080.

11. Upon failure of the cabinet [director] to notify an affected state whose waters may be affected by a discharge from Kentucky.

12. When the permit becomes final and effective on or after August 19, 1981, if the permittee shows a good cause for the modification, to conform to changes respecting the following administrative regulation: 401 KAR 5:065, Section 1(3) and (4).

[13. When the permittee's effluent limitations were imposed under 401 KAR 5:080, Section 1 and CWA Section 402(a)(1)) (33 USC Section 1342(a)(1)) and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline, but in no case may the limitations be made less stringent than the subsequent guideline.]

13. [14.] To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

14. [15.] When the discharger has installed the treatment technology considered by the cabinet [permit writer] in setting [settling] effluent limitations imposed under 401 KAR 5:080, Section 1 and CWA Section 402(a)(1) (33 USC Section 1342(a)(1)) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

15. [16.] When the permit becomes final and effective on or after March 9, 1982, and the permittee applies for the modification no later than January 24, 1985, if the permittee shows good cause in its request and that it qualifies for the modification, to conform to changes respecting the following administrative regulations: [401 KAR 5:065, Section 3(2), 401 KAR 5:065, Section 3(3), and] 401 KAR 5:055, Section 6(2) and 401 KAR 5:065, Section 3(2) and (3).

(2) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively revoke and [or] reissue a permit:

(a) Cause exists for revocation [termination] under Section 7 of this administrative regulation and the cabinet [director] determines that modification or revocation and reissuance is appropriate.

(b) The cabinet [director] has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but shall [will] not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the cabinet shall [director may] modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 401 KAR 5:075. Any permit modification not processed as a minor modification under this section shall [will] be made for cause and with a 401 KAR 5:075 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirements;

(d) Allow for a change in ownership or operational control of a facility where the cabinet [director] determines that no other change in the permit is necessary, if [provided that] a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the cabinet [director];

(e) Change the construction schedule for a discharger which is a new source; [or]

(f) Delete a point source outfall when the discharge from that outfall is revoked [terminated] and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 401 KAR 5:057 or a modification thereto that has been approved in accordance with the procedures in 401 KAR 5:057 as enforceable conditions of the POTW's permits.

Section 7. Revocation [Termination] of Permit. (1) The following are causes for revoking [terminating] a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time; or

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or revocation [termination].

(2) KPDES permits may be modified or revoked [terminated] when there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit for example, plant closure or termination of discharge by connection to a POTW.

(3) The cabinet shall [director will] follow the applicable procedures of 401 KAR 5:075 in revoking [terminating] a KPDES permit under this section.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this amended regulation has been scheduled for June 28, 1994, at 10 a.m. (eastern time), in the Auditorium of the State Office Building at Mero and High Streets in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by June 23, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard 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 amended regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of business (4:30 p.m., eastern time) on June 28, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before June 23, 1994 between 8 a.m. and 4:30 p.m. (eastern time).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 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 regulation contains the basis for provisions, terms and effect of Kentucky Pollutant Discharge Elimination System (KPDES) permits. This regulation affects all wastewater dischargers in the Commonwealth, which represents over 9300 facilities. The proposed changes to this regulation are for the following reasons: Section 6 changes are due to October 17, 1988, and January 4, 1989, federal regulations (40 CFR 122.62 and 122.63) which concern the modification or revocation and reissuance of permits. All other changes are to correct cross-references or to update to KRS Chapter 13A requirements.

(a) Direct and indirect costs or savings to those affected: None. Any direct or indirect costs or savings would have occurred when the applicable federal regulations went into effect. This is because KPDES is a delegated federal permit program subject to federal requirements which is administered by the state of Kentucky.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There are no competitive impacts between states, because the federal regulations are applied nationwide.

(b) Reporting and paperwork requirements: None. Any change in reporting or paperwork would have occurred when the applicable federal regulations took effect.

(2) Effects on the promulgating administrative body: None. Any effects on the agency would have occurred when the federal regulations became effective.

(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. These changes will not impact state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Kentucky's KPDES delegation authority prohibits the use of provisions less stringent than what would be imposed by the federal agency. These regulations adopt the federal standards.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administration regulation or government policy conflicts, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No regulation conflicts.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: These changes are being made to address modifications to the federal regulations which need to be incorporated into state regulations. This is necessary to maintain delegation of the NPDES permit program.

TIERING: Was tiering applied? Yes. To the extent that the original federal regulation changes provided for tiering, these administrative regulation changes are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

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 regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to any local government unit which operates facilities that discharge to waters of the Commonwealth.

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. None, because any impact on the expenditures and revenues of a local government would have occurred when the applicable federal regulation took effect. This may have led local governments to take actions (increase taxes or increase fees) to comply with the new federal regulations.

Revenues (+/-): None
Expenditures (+/-): None
Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate on Kentucky to adopt this regulation. For Kentucky to maintain its delegation of authority over NPDES these amendments are being made. This involves the following federal regulations: 40 CFR 122.62 and 122.63.

2. State compliance standards. The following parts of this regulation are being modified to match the referenced federal requirements: Section 6 (basis for modification or revocation and reissuance).

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards being proposed for this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:075. Cabinet review procedures for KPDES permits.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-420, 224.10-440, 224.10-470, 224.16-050, 224.70-100

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) establishes that the cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251 et seq.) subject to the conditions imposed in 33 USC Section 1342(b) and (d). This administrative regulation sets forth the procedures through which the cabinet will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits.

Section 1. Review of the Application. (1) Any person who requires a permit under the KPDES program shall complete, sign, and submit to the cabinet [~~director~~] an application for the permit as required under 401 KAR 5:060, Section 1. Applications are not required for KPDES general permits. However, operators who elect to be covered by a general permit shall submit written notification to the cabinet [~~director~~] at such time as the cabinet [~~director~~] indicates in Section 3 of this administrative regulation.

(2) The cabinet shall [~~director will~~] not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by 401 KAR 5:060, Section 1.

(3) Permit applications shall comply with the signature and certification requirements of 401 KAR 5:060, Section 9 [3].

(4) The cabinet shall [~~director will~~] review for completeness every application for a KPDES permit. Each application submitted by a KPDES new source or KPDES new discharger shall [~~will~~] be reviewed for completeness by the cabinet [~~director~~] within thirty (30) days of its receipt. Each application for a KPDES permit submitted by an existing source shall [~~will~~] be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the cabinet shall [~~director will~~] notify the applicant in writing whether the application is complete. If the application is incomplete, the cabinet shall [~~director will~~] list the information necessary to make the application complete. If [~~When~~] the application is for an existing source, the cabinet shall [~~director will~~] specify in the notice of deficiency a date for submitting the necessary information. The cabinet shall [~~director will~~] notify the applicant that the application is complete upon receiving this information. After the application is completed, the cabinet [~~director~~] may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for the [~~such~~] additional information shall [~~will~~] not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(6) If the cabinet [~~director~~] decides that a site visit is necessary for any reason in conjunction with the processing of an application, the cabinet shall [~~director will~~] notify the applicant and a date will be scheduled.

(7) The effective date of an application is the date on which the cabinet [~~director~~] notifies the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the cabinet shall [~~director will~~] no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the cabinet [~~director~~] intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

(e) Complete any formal proceedings under this administrative regulation.

(9) Conflicts of interest.

(a) Any person [~~The director~~] who issues a permit will be subject to the conflict of interest provisions of KRS 11A.020 and 11A.030 [~~KPDES policy memorandum concerning conflicts of interest~~].

(b) Any person aggrieved by the issuance of a permit under the KPDES administrative regulations may challenge the permit pursuant to Section 13 of this administrative regulation if paragraph (a) of this subsection [~~the policy memorandum~~] has been violated.

(c) The hearing officer shall [~~will~~] remand any permit issued in violation of paragraph (a) of this subsection [~~the policy memorandum~~] to the cabinet for reconsideration.

(d) Following remand, any cabinet employee who reconsiders the permit shall [~~will~~] be subject to the conflict of interest provisions [~~policy memorandum~~] set forth in paragraph (a) of this subsection. The reconsideration shall [~~will~~] require a new public comment period and public hearing only if information offered during earlier permit proceedings was excluded by the cabinet [~~director~~] as a direct result of a conflict of interest.

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Revocation [~~Termination~~]. (1) Permits may be modified, revoked and reissued, or revoked [~~terminated~~] either at the request of any interested person, including the permittee, or upon the cabinet's [~~director's~~] initiative. However, permits may only be modified, revoked and reissued, or revoked [~~terminated~~] for the reasons specified in 401 KAR 5:070, Sections 6 or 7. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the cabinet [~~director~~] decides the request is not justified, the cabinet shall [~~director will~~] send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or revocation [~~termination~~] are not subject to public notice, comment, or hearings.

(3) If the cabinet [~~director~~] tentatively decides to modify or revoke and reissue a permit under 401 KAR 5:070, Section 6, the cabinet [~~director~~] shall prepare a draft permit under Section 3 of this administrative regulation incorporating the proposed changes. The cabinet [~~director~~] may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the cabinet shall [~~director will~~] require the submission of a new application.

(a) In a permit modification under this section, only those conditions to be modified shall [~~will~~] be reopened when a new draft permit is prepared. All other aspects of the existing permit shall [~~will~~] remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as described [~~defined~~] in 401 KAR 5:070, Section 6(3) shall [~~are~~] not be subject to the requirements of this section.

(4) If the cabinet preliminarily [~~director tentatively~~] decides to revoke [~~terminate~~] a permit under 401 KAR 5:070, Section 7, the cabinet shall [~~director will~~] issue a notice of intent to revoke [~~terminate~~]. A notice of intent to revoke [~~terminate~~] is a type of draft permit which follows the same procedure as any draft permit prepared under Section 3 of this administrative regulation.

Section 3. Draft Permits. (1) Once an application is complete, the cabinet shall preliminarily [~~director will tentatively~~] decide whether to prepare a draft permit or to deny the application.

(2) If the cabinet [~~director~~] makes a preliminary decision to deny the permit application, the cabinet shall [~~director will~~] issue a notice of intent to deny. A notice of intent to deny the permit application is

a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the cabinet's [~~director's~~] determination under Section 11 of this administrative regulation is that the preliminary decision to deny the permit application was incorrect, the cabinet shall [~~director will~~] withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (4) of this section.

(3) If the cabinet [~~director~~] makes a preliminary decision to issue a KPDES general permit, the cabinet shall [~~director will~~] prepare a draft general permit in accordance with subsection (4) of this section.

(4) If the cabinet [~~director~~] decides to prepare a draft permit, the cabinet shall [~~director will~~] prepare a draft permit that contains the following information:

(a) All conditions under 401 KAR 5:065, Section 1;

(b) All compliance schedules under 401 KAR 5:070, Section 2;

(c) All monitoring requirements under 401 KAR 5:070, Section 3; and

(d) Effluent limitations, standards, prohibitions, and conditions under 401 KAR 5:057, 401 KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080 and all variances that are to be included.

(5) All draft permits prepared by the cabinet under this section shall [~~will~~] be accompanied by a fact sheet and shall [~~will~~] be based on the administrative record, publicly noticed, and made [~~make~~] available for public comment. The cabinet shall [~~director will~~] give notice of opportunity for a public hearing, issue a final decision, and respond to comments. A demand for a hearing may be made pursuant to KRS 224.10-420 and Section 13 of this administrative regulation following the issuance of a final decision.

Section 4. Fact Sheets. (1) A fact sheet shall [~~will~~] be prepared for every draft permit for a major KPDES facility or activity, for every KPDES general permit, for every KPDES draft permit that incorporates a variance or requires an explanation under subsection (3) [~~(4)~~] of this section, and for every draft permit which the cabinet [~~director~~] finds is the subject of widespread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The cabinet shall [~~director will~~] send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall [~~will~~] include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) A quantitative and qualitative description of the discharges described in the application;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing;

3. Any other procedures under KRS 224.10-420 and Section 13 of this administrative regulation by which the public may participate in the final decision; [~~and~~]

(f) Name and telephone number of a person to contact for additional information; and [~~.~~]

(g) [~~(3)~~] Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guidelines or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed. [~~.~~]

(3) [~~(4)~~](a) When the draft permit contains any of the following conditions, an explanation of the reasons why the [~~such~~] conditions are applicable:

1. Limitations to control toxic pollutants under 401 KAR 5:065, Section 2(5);

2. Limitations on internal waste streams under 401 KAR 5:065, Section 3(8); or

3. Limitations on indicator pollutants under 401 KAR 5:080, Section 1(2)(a).

(b) For every permit to be issued to a treatment works owned by a person other than the Commonwealth or its subdivisions [~~a municipality~~], an explanation of the cabinet's [~~director's~~] decision on regulation of users under 401 KAR 5:065, Section 2(12).

(4) [~~(5)~~] When appropriate, a sketch or detailed description of the location of the discharge described in the application.

Section 5. Public Notice of Permit Actions and Public Comment Period. (1) Scope.

(a) The cabinet shall [~~director will~~] give public notice that the following actions have occurred:

1. A permit application has been preliminarily [~~tentatively~~] denied under Section 3(2) of this administrative regulation;

2. A draft permit has been prepared under Section 3(4) of this administrative regulation;

3. A hearing has been scheduled under Section 7 of this administrative regulation; or [~~and~~]

4. A KPDES new source determination has been made in accordance with the definition in 401 KAR 5:001 [~~401 KAR 5:050~~].

(b) No public notice is required when a request for permit modification, revocation and reissuance, or revocation [~~termination~~] is denied under Section 2 of this administrative regulation. Written notice of that denial shall [~~will~~] be given to the requester and to the permittee.

(c) Public notices may describe more than one (1) permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (1) of this section shall [~~will~~] allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall [~~will~~] be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.

(3) Methods. Public notice of activities described in subsection (1)(a) of this section shall [~~will~~] be given by the following methods:

(a) The cabinet shall [~~will~~] mail a notice to the persons listed in subparagraphs 1 through 5 of this paragraph. Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.

1. The applicant, except for KPDES general permittees, and Region IV, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Kentucky Historic Society and other appropriate government authorities, including any affected states [~~sates~~];

3. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

4. Any user identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. 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 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.

(b) For major permits and KPDES general permits, the cabinet shall [~~will~~] publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Kentucky law; and

(d) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices. All public notices issued under this administrative regulation shall [~~will~~] contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of KPDES draft general permits under 401 KAR 5:055, Section 5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for KPDES general permits when there is no application;

4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 6 and 7 of this administrative regulation and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement shall [~~will~~] be satisfied by a map or description of the permit area; and

7. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in paragraph (a) of this subsection, the public notice for a permit hearing under Section 7 of this administrative regulation shall [~~will~~] contain the following information:

1. Reference to the date of previous public notices, relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under 401 KAR 5:055, Section 7(4). In addition to the information required under subsection (4)(a) of this section, public notice of a KPDES draft permit for a discharge when a 401 KAR 5:055, Section 7(4) request has been filed under 401 KAR 5:055, Section 3, shall [~~will~~] include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under 401 KAR 5:065, Section 2(1) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under CWA Sections 301 or 306 (33 USC Sections 1311 or 1316); and

2. A statement that a 401 KAR 5:055, Section 7(4), request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

(5) In addition to the general public notice described in subsection (4)(a) of this section all persons identified in subsection (3)(a)1, 2, 3, and 4 of this section shall [~~will~~] be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).

Section 6. Public Comments and Requests for Public Hearings. During the public comment period provided under Section 5 of this administrative regulation, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall [~~will~~] be considered in making the final decision and shall be answered as provided in Section 12 of this administrative regulation.

Section 7. Public Hearings. (1) The cabinet shall [~~director will~~] hold a public hearing when a significant degree of public interest in a draft permit is found on the basis of requests. The cabinet [~~director~~] also may hold a public hearing [~~at his or her discretion,~~] whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

(2) Public notice of the hearing shall [~~will~~] be given as specified in Section 5 of this administrative regulation.

(3) Any person may submit oral or written statements and data concerning the 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 Section 5 of this administrative regulation shall [~~will~~] automatically be extended to the close of any public hearing under this section. The cabinet [~~hearing officer~~] may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the cabinet's [~~director's~~] preliminary decision to deny an application, revoke [~~terminate~~] a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under Section 5 of this administrative regulation. All supporting materials shall be included in full and may not be incorporated by reference, unless they consist of state or federal statutes and regulations, EPA or the cabinet's documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the record available to the cabinet as directed by the cabinet [~~director~~]. A comment period longer than thirty (30) days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods, which may be established under Section 5 of this administrative regulation. Nothing in this section shall [~~will~~] be construed to prevent any person aggrieved by a final permit decision from filing a demand for a hearing under KRS 224.10-420 and Section 13 of this administrative regulation.

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies. (1) If during the comment period for a KPDES draft permit, the district engineer of the Corps of Engineers advises the cabinet [~~director~~] in writing that anchorage and navigation of any of the waters of the Commonwealth would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the district engineer advises the cabinet [~~director~~] that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or

navigation, then the cabinet shall [~~director will~~] include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and shall [~~may~~] not be made through the procedures provided in this administrative regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall [~~will~~] be considered stayed in the KPDES permit for the duration of that stay.

(2) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the cabinet [~~director~~] may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of KRS Chapter 224.

(3) In appropriate cases the cabinet [~~director~~] may consult with one (1) or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.

Section 10. Reopening of the Public Comment Period. (1) If any data information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the cabinet [~~director~~] may take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under Section 3 of this administrative regulation;

(b) Prepare a revised fact sheet under Section 4 of this administrative regulation and reopen the comment period; or

(c) Reopen and extend the comment period under Section 5 of this administrative regulation to give interested persons the opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 5 of this administrative regulation shall [~~should~~] define the scope of the reopening.

(3) Public notice of any of the above actions will be issued under Section 5 of this administrative regulation.

Section 11. Issuance and Effective Date of Permit. (1) After the close of the public comment period under Section 5 of this administrative regulation, the cabinet shall [~~director will~~] issue, deny, modify, revoke and [~~,~~] reissue, or revoke [~~terminate~~] a permit. The cabinet shall [~~director will~~] notify the applicant and each person who has submitted written comments or requested notice of that determination. This notice shall [~~will~~] include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or revoke [~~terminate~~] a permit.

(2) A final permit decision shall [~~will~~] become effective thirty (30) days after the service of notice of the decision under subsection (1) of this section, unless:

(a) A later effective date is specified in the decision; [~~or~~]

(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or

(c) No comments requested a change in the draft permit, in which case the permit shall [~~will~~] become effective immediately upon issuance.

(3) The [~~order or~~] determination which is a condition precedent to demanding a hearing under KRS 224.10-420(2) and Section 13 of this administrative regulation shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the determination [~~order~~] is entered by the cabinet [~~director~~] and shall not begin on the date the permit decision becomes effective.

Section 12. Response to Comments. (1) When [~~At the time that~~] any final permit decision is issued under Section 11 of this administrative regulation the cabinet [~~director~~] shall issue a response to comments. This response shall [~~will~~]:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. This response shall [~~will~~] fully consider all comments resulting from any hearing conducted under this administrative regulation.

(2) The response to comments shall [~~will~~] be available to the public. Any demand for a hearing on this response shall be filed according to procedures specified in KRS 224.10-420, 224.10-440, 224.10-470 and any administrative regulations promulgated pursuant thereto.

Section 13. Hearings under KRS 224.10-420. (1) A determination under Section 11 of this administrative regulation when issued by the cabinet shall [~~director will~~] be subject to a demand for a hearing pursuant to KRS 224.10-420(2).

(2) Any person aggrieved by the issuance of a final permit may demand a hearing pursuant to KRS 224.10-420(2).

(3) Any hearing held pursuant to this section shall [~~will~~] be subject to the provisions of KRS 224.10-440 and 224.10-470.

(4) Failure to raise issued pursuant to Section 8 of this administrative regulation shall [~~will~~] not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-420(2).

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this amended regulation has been scheduled for June 28, 1994, at 10 a.m. (eastern time), in the Auditorium of the State Office Building at Mero and High Streets in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by June 23, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard 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 amended regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of business (4:30 p.m., eastern time) on June 28, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before June 23, 1994 between 8 a.m. and 4:30 p.m. (eastern time).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 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 regulation sets forth the procedures for administrative review of Kentucky Pollutant Discharge Elimination System (KPDES) permit applications, preparing draft permits, public notice requirements and public hearings. This regulation affects all wastewater dischargers in the Commonwealth, which represents over 9300 facilities. The proposed changes to this regulation are for the following reasons: All changes are to correct cross-references or to update to KRS Chapter 13A requirements.

(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. These changes will not impact state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no acceptable alternatives to correcting inaccurate citations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administration regulation or government policy conflicts, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No regulation conflicts.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. The original administrative regulation provided for tiering, these administrative regulation changes do not affect that. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

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 regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to any local government unit which operates facilities that discharge to waters of the Commonwealth.

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. None. These revisions only apply to the correction of cross-references and KRS Chapter 13A changes.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments do not relate to federal requirements.

2. State compliance standards. The regulation revisions only pertain to the correction of citations, cross-references and KRS Chapter 13A changes.

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards being proposed for this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System.

RELATES TO: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 provides that the cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251 et seq.) subject to the conditions imposed in 33 USC Section 1342(b) and (d). This section further provides that any exemptions granted in the issuance of KPDES permits shall be pursuant to 33 USC Sections 1311, 1312, and 1326(a). This administrative regulation sets forth the criteria and standards for the KPDES permitting system.

Section 1. Criteria and Standards for Technology-based Treatment Requirements. (1) Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements in KPDES permits including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations.

(2) Compliance with technology-based treatment requirements in KPDES permits.

(a) General. Technology-based treatment requirements represent the minimum level of control that shall [will] be imposed in a KPDES permit. Permits shall [will] contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

1. For POTWs effluent limitations based upon:

a. Secondary treatment as required by CWA Section 301(b)(1)(B) (33 USC Section 1311(b)(1)(B)) - from date of permit issuance; and

b. The best practicable waste treatment technology as required by CWA Section 301(b)(1)(A) (33 USC Section (b)(1)(A)) - not later than July 1, 1983; and

2. For dischargers other than POTWs, except as otherwise provided in the KPDES administrative regulations, effluent limitations requiring:

a. The best practicable control technology currently available (BPT):

(i) For effluent limitations promulgated under CWA Section 304(b) after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before this date, compliance as expeditiously as practicable but not later than three (3) years after the date the limitations are promulgated under CWA

Section 304(b) and not later than March 31, 1989;

(ii) For effluent limitations established on a case-by-case basis based on best professional judgment (BPJ) under paragraph (c)2 of this subsection in a permit issued after February 4, 1987, compliance as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989; or

(iii) For all other BPT effluent limitations compliance is required from the date of permit issuance.

b. For conventional pollutants, the best conventional pollutant control technology (BCT):

(i) For effluent limitations promulgated under CWA Section 304(b), as expeditiously as practicable but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b), and not later than March 31, 1989; or

(ii) For effluent limitations established on a case-by-case basis based on BPJ under paragraph (c)2 of this subsection, in a permit issued after February 4, 1987, compliance as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989;

c. For all toxic pollutants referred to in Section 6 of this administrative regulation the best available technology economically achievable (BAT):

(i) For effluent limitations established under CWA Section 304(b), as expeditiously as practicable but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b), and not later than March 31, 1989; or

(ii) For permits issued on a case-by-case basis based on BPJ under paragraph (c)2 of this subsection after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but not later than three (3) years after the date the limitations are established, and not later than March 31, 1989.

d. For all toxic pollutants other than those listed in Section 6 of this administrative regulation, effluent limitations based on BAT:

(i) For effluent limitations promulgated under CWA Section 304(b) compliance is required as expeditiously as practicable, but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b) and not later than March 31, 1989; or

(ii) For permits issued on a case-by-case BPJ basis under paragraph (c)2 of this subsection after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989.

e. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT.

(i) For effluent limitations promulgated under CWA Section 304(b) compliance is required as expeditiously as practicable, but not later than three (3) years after the date the limitations are established and not later than March 31, 1989; or

(ii) For permits issued on a case-by-case BPJ basis under paragraph (c)2 of this subsection after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989.

~~[a. The best practicable control technology currently available (BPT) as required by CWA Section 301(b)(1)(A) (33 USC Section 1311(b)(1)(A)) from date of permit issuance;~~

~~b. For conventional pollutants, the best conventional pollutant control technology (BCT) not later than July 1, 1984;~~

~~c. For all toxic pollutants referred to in Section 5 of this regulation as required by CWA Section 301(b)(2)(A) (33 USC Section 1311(b)(2)(A)) the best available technology economically achievable (BAT) not later than July 1, 1984;~~

~~d. For all toxic pollutants other than those listed in Section 5 of this regulation effluent limitations based on the BAT not later than three (3) years after the date such effluent limitations are incorporated into a KPDES permit; and~~

~~e. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT not later than three (3) years after the date such effluent limitations are incorporated into a KPDES permit, or July 1, 1984, whichever is later, but in no case later than July 1, 1987.]~~

(b) Variances and extensions.

1. The following variance from technology-based treatment requirements is authorized by KRS Chapter 224 and may be applied for under 401 KAR 5:055. For dischargers other than POTWs:

a. Economic variance from BAT, as indicated in 401 KAR 5:055, Section 7(1);

b. Thermal variance from BPT, BCT, and BAT, under Section 4 of this administrative regulation, may be authorized.

2. An extension of the BAT deadline may be applied for under 401 KAR 5:055, Section 7(3) for dischargers other than POTWs, for use of innovative technology.

(c) Methods of imposing technology-based treatment requirements in permits. Technology-based treatment requirements may be imposed through one (1) of the following three (3) methods:

1. Application of EPA-promulgated effluent limitations to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under 401 KAR 5:055, and Section 3 of this administrative regulation.

2. On a case-by-case basis under CWA Section 402(a)(1) (33 USC Section 1342(a)(1)), to the extent that EPA-promulgated effluent limitations are inapplicable. The cabinet [~~permit writer~~] shall apply the appropriate factors listed in paragraph (d) of this subsection and shall consider:

a. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and

b. Any unique factors relating to the applicant.

3. Through a combination of the methods in paragraph (c)1 and 2 of this subsection. Where EPA-promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to administrative regulation on a case-by-case basis in order to carry out the provisions of KRS Chapter 224.

4. Limitations developed under paragraph (c)2 of this subsection may be expressed, where appropriate, in terms of toxicity if it is shown that the limits reflect the appropriate requirements of KRS Chapter 224.

(d) In setting case-by-case limitations pursuant to paragraph (c) of this subsection, the cabinet shall [~~permit writer must~~] consider the following factors:

1. For BPT requirements:

a. The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

b. The age of equipment and facilities involved;

c. The process employed;

d. The engineering aspects of the application of various types of control techniques;

e. Process changes; and

f. Nonwater quality environmental impact (including energy requirements).

2. For BCT requirements:

a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

b. The comparison of the cost and level of reduction of the [~~such~~]

pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of the [~~such~~] pollutants from a class or category of industrial sources;

c. The age of equipment and facilities involved;

d. The process employed;

e. The engineering aspects of the application of various types of control techniques;

f. Process changes; and

g. Nonwater quality environmental impact (including energy requirements).

3. For BAT requirements:

a. The age of equipment and facilities involved;

b. The process employed;

c. The engineering aspects of the application of various types of control techniques;

d. Process changes;

e. The cost of achieving such effluent reduction; and

f. Nonwater quality environmental impact (including energy requirements).

(e) Technology-based treatment requirements are applied prior to or at the point of discharge.

(f) Technology-based treatment requirements shall not [~~cannot~~] be satisfied through the use of "nontreatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

1. The technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

2. The discharger agrees to waive any opportunity to request a variance under 401 KAR 5:055, Section 3; and

3. The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(g) Technology-based effluent limitations shall [~~will~~] be established under this administrative regulation for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(h)1. The cabinet [~~director~~] may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or a limit for a nonconventional pollutant which shall [~~will~~] not be subject to modification where:

a. Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

b.(i) The limitation reflects BAT-level control of discharges of one (1) or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutants [~~(s)~~] is not feasible for economic or technical reasons;

(ii) The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(iii) The fact sheet required by 401 KAR 5:075, Section 4, sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level control of the toxic pollutant discharges identified in paragraph (h)1b(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutants [~~(s)~~].

2. The cabinet [~~director~~] may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

a. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance; or

b.(i) The limitation reflects BAT-level control of discharges, or an appropriate level of one (1) or more hazardous substances [~~(s)~~] which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substances which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substance is not feasible for economic or technical reasons;

(ii) The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

(iii) The fact sheet, required by 401 KAR 5:075, Section 4, sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level, or other appropriate level, control of the hazardous substances discharges identified in paragraph (h)1b(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the hazardous substances [~~(s)~~].

c. Hazardous substances which are also toxic pollutants are subject to paragraph (h)1 of this subsection.

3. The cabinet shall [~~director may~~] not set a more stringent limit under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutants [~~(s)~~] or hazardous substances [~~(s)~~] controlled by the limit were limited directly.

4. Toxic pollutants identified under paragraph (h)1 of this subsection remain subject to 401 KAR 5:065, Section 1(15), which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

Section 2. Criteria for Issuance of Permits to Aquaculture Projects. (1) Purpose and scope.

(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.

(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under KRS Chapter 224 in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.

(c) Permits issued for discharges into aquaculture projects under this section are KPDES permits and are subject to all applicable requirements. Any permit shall [~~will~~] include such conditions, including monitoring and reporting requirements, as are necessary to comply with the KPDES administrative regulations. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

(2) Criteria.

(a) [~~No~~] KPDES permits shall not [~~permit will~~] be issued to an aquaculture project unless:

1. The cabinet [~~director~~] determines that the aquaculture project:

a. Is intended by the project operator to produce a crop which has significant direct or indirect commercial value, or is intended to be operated for research into possible production of such a crop; and

b. Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

2. The applicant has demonstrated, to the satisfaction of the cabinet [~~director~~], that the use of the pollutant to be discharged to the aquaculture project shall result in an increased harvest of organisms under culture over what would naturally occur in the area;

3. The applicant has demonstrated, to the satisfaction of the cabinet [~~director~~], that if the species to be cultivated in the aquaculture project is not indigenous to the immediate geographical area, there shall be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

4. The cabinet [~~director~~] determines that the crop shall not have a significant potential for human health hazards resulting from its consumption; and

5. The cabinet [~~director~~] determines that migration of pollutants from the designated project area to waters of the Commonwealth outside of the aquaculture project will not cause or contribute to a violation of the applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project

shall [~~will~~] not result in the enlargement of a preexisting mixing zone area beyond what had been designated for the original discharge.

(b) Permits shall not [~~No permit will~~] be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a plan approved by EPA.

(c) Designated project areas shall [~~will~~] not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.

(d) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

Section 3. Criteria and Standards for Determining Fundamentally Different Factors. (1) Purpose and scope.

(a) This section establishes the criteria and standards to be used in determining whether effluent limitations or pretreatment standards alternative to those required by promulgated EPA effluent limitations guidelines and categorical pretreatment standards, hereinafter referred to as "national limits," shall be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This section applies to all national limits promulgated by EPA except for best practicable treatment standards for steam-electric plants.

(b) This case-by-case review shall not [~~will only~~] be done unless [~~if~~] data specific to that discharger indicate they present factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person asserting [~~believing~~] that factors relating to a discharger's facilities, equipment, processes, or other facilities related to the discharger are fundamentally different from the factors considered during the development of the national limits may request a fundamentally different factors variance under 401 KAR 5:055, Section 3. In addition, such a variance may be proposed by the cabinet [~~director~~] in the draft permit.

(2) Criteria.

(a) A request for the establishment of effluent limitations under this section, fundamentally different factors variance, shall not [~~will~~] be approved unless [~~only if~~]:

1. There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested;

2. Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and

3. The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of 401 KAR 5:075.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines shall not [~~will~~] be approved unless [~~only if~~]:

1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference;

2. The alternative effluent limitation or standard shall [~~will~~] ensure compliance with the KPDES administrative regulations and KRS Chapter 224; and

3. Compliance with the national limits, either by using the technologies upon which the national limits are based or by other control alternative, would result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A nonwater quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall not [~~will~~] be approved unless [~~only if~~]:

1. The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative effluent limitation or standard would not result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A nonwater quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

1. The nature or quality of pollutants contained in the raw waste load of the discharger's [~~applicant's~~] process wastewater;

2. The volume of the discharger's process wastewater and effluent discharged;

3. Nonwater quality environmental impact of control and treatment of the discharger's raw waste load;

4. Energy requirements of the application of control and treatment technology;

5. Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities, processes employed, process changes, and engineering aspects of the application of control technology; and

6. Cost of compliance with required control technology.

(e) A variance request or portion of such a request under this section shall [~~will~~] not be granted on any of the following grounds:

1. The infeasibility of installing the required waste treatment equipment within the time allowed in Section 1 of this administrative regulation;

2. The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors [~~(s)~~] listed in paragraph (d) of this subsection;

3. The discharger's ability to pay for the required waste treatment; or

4. The impact of a discharge on local receiving water quality.

(3) Method of application.

(a) A written request for a variance under this administrative regulation shall be submitted in duplicate to the cabinet [~~director~~] in accordance with 401 KAR 5:075.

(b) The burden is on the person requesting the variance to demonstrate [~~explain~~] that:

1. Factors [~~(s)~~] listed in subsection (2) of this section regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester shall refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;

2. The alternative limitations requested are justified by the fundamental difference alleged in subparagraph 1 of this paragraph; and

3. The appropriate requirements of subsection (2) of this section have been met.

Section 4. Criteria for Determining Alternative Effluent Limitations. (1) Purpose and scope. The factors, criteria and standards for the establishment of alternative thermal effluent limitations described in CWA Section 316(a) (33 USC Section 1326(a)) shall [~~will~~] also be used in KPDES permits and shall [~~will~~] be referred to as 401 KAR 5:055, Section 7(4), variances.

[~~(2) Definitions. For the purpose of this section:~~

~~(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under 401 KAR 5:055, Section 7(4).~~

~~(b) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced,~~

~~indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.~~

~~(c) The term "balanced, indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with 401 KAR 5:065, Section 1(1)(b), and may not include species whose presence of abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055, Section 7(4).]~~

(2) [~~(3)~~] Early screening of applications for 401 KAR 5:055, Section 7(4), variances.

(a) Any initial application for the variance shall include the following early screening information:

1. A description of the alternative effluent limitation requested;

2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

3. A general description of the type of data, studies, experiments, and other information which the discharger intends to submit for the demonstration; and

4. [~~Such~~] Data and information as may be available to assist the cabinet [~~director~~] in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this subsection, the discharger shall consult with the cabinet [~~director~~] at the earliest practicable time, but not later than thirty (30) days after the application is filed, to discuss the discharger's early screening information. Within sixty (60) days after the application is filed, the discharger shall submit for the cabinet's [~~director's~~] approval a detailed plan of study which the discharger will undertake to support its 401 KAR 5:055, Section 7(4), demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical, and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the cabinet shall [~~director will~~] either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the cabinet [~~director~~] subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger shall provide any additional information or studies which the discharger contends [~~feels~~] are appropriate to support the demonstration.

(c) Any application for the renewal of 401 KAR 5:055, Section 7(4), variance shall include only the [~~such~~] information described in paragraphs (a) and (b) of this subsection and 401 KAR 5:075 as the cabinet [~~director~~] requests within sixty (60) days after receipt of the permit application.

(d) The cabinet shall [~~director will~~] promptly notify the Secretary of the U.S. Department of Commerce, the Secretary of the U.S. Department of the Interior, and any affected state of the filing of the request and shall [~~will~~] consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making the [~~such~~] demonstrations.

(f) If an applicant desires a ruling on a 401 KAR 5:055, Section 7(4), application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under paragraph (a) of this subsection. This request will be granted or denied at the discretion of the cabinet [~~director~~].

(3) [~~(4)~~] Criteria and standards for the determination of alternative effluent limitations.

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the cabinet [~~director~~] that the [~~such~~] effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made. This demonstration shall show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, shall assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining if [~~whether or not~~] the protection and propagation of the affected species will be assured, the cabinet [~~director~~] may consider any information contained or referenced in any applicable thermal water quality criteria and information published by the administrator under CWA Section 304(a) (33 USC Section 1314(a)) or any other information it [~~he~~] deems relevant.

(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any [~~such~~] demonstrations shall show:

1. That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge has been made; or

2. That despite the occurrence of [~~such~~] previous harm, the desired alternative effluent limitations, or appropriate modifications thereof, shall nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.

(d) In determining if [~~whether or not~~] prior appreciable harm has occurred, the cabinet shall [~~director will~~] consider the length of time in which the applicant has been discharging and the nature of the discharge.

Section 5. New Sources and New Dischargers. [~~(1) Definitions.~~

~~(a) "New source" and "new discharger" are defined in 401 KAR 5:050, Section 1.~~

~~(b) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.~~

~~(c) "Existing source" means any source which is not a new source or a new discharger.~~

~~(d) "Site" is defined in 401 KAR 5:050, Section 1.~~

~~(e) "Facilities or equipment" means buildings, structures process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.~~]

(1) [~~(2)~~] Criteria for new source determination.

(a) Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets the definition of "new source" in 401 KAR 5:001 [~~5:050, Section 1~~]; and:

1. It is constructed at a site at which no other source is located;

2. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

3. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the cabinet [~~director~~] shall consider such factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(b) A source meeting the requirements of paragraph (a) of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no [~~such~~] independently applicable standard, the source is a new discharger. See 401 KAR 5:001 [~~5:050, Section 1~~].

(c) Construction on a site at which an existing source is located results in a modification subject to 401 KAR 5:070, Section 6 rather than a new source [~~(~~]or a new discharger[~~)~~] if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (a) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

(d) Construction of a new source as defined under 401 KAR 5:001 [~~5:050, Section 1~~] has commenced if the owner or operator has:

1. Begun or caused to begin as part of a continuous on-site construction program:

a. Any placement, assembly, or installation of facilities or equipment; or

b. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be revoked [~~terminated~~] or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.

(e) When a KPDES permit issued to a source with a "protection period" under subsection (2) [~~(3)~~](a) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of Section 1 of this administrative regulation and CWA Section 301 (33 USC Section 1311) and any other then applicable CWA requirements immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall [~~may~~] be allowed except when necessary to achieve compliance with requirements promulgated less than three (3) years before the expiration of the protection period.

(f) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed ninety (90) days), the owner or operator shall meet all permit conditions. The requirements of this subsection do not apply if the owner or operator is issued a permit containing a compliance schedule under 401 KAR 5:070, Section 2(1).

(g) After the effective date of new source performance standards, no owner or operator shall operate the source in violation of those standards applicable to the source.

(2) [~~(3)~~] Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this subsection.

(a) Except as provided in paragraph (b) of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, shall [~~may~~] not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under CWA Section 301(b)(2) (33 USC Section 1311(b)(2)) for the soonest ending of the following periods:

1. Ten (10) years from the date that construction is completed;

2. Ten (10) years from the date the source begins to discharge process or other nonconstruction related wastewater; or

3. The period of depreciation or amortization of the facility for the purposes of Internal Revenue Code Section 167 or 169 (26 USC Section 167 or 169).

(b) The protection from more stringent standards of performance afforded by paragraph (a) of this subsection does not apply to:

1. Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under CWA Section 307(a) (33 USC Section 1317 (a)); or

2. Additional permit conditions in accordance with 401 KAR 5:065 [~~5:055~~], Section 2(5) [~~1(2)~~] controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

Section 6. Toxic Pollutants. References throughout the KPDES administrative regulations establish specific requirements for discharges of toxic pollutants. The following listing identifies those toxic pollutants required to be considered for each of these KPDES requirements:

(1) Acenaphthene.
(2) Acrolein.
(3) Acrylonitrile.
(4) Aldrin or [~~/~~] dieldrin.
(5) Antimony and compounds.
(6) Arsenic and compounds.
(7) Asbestos.
(8) Benzene.
(9) Benzidine.
(10) Beryllium and compounds.
(11) Cadmium and compounds.
(12) Carbon tetrachloride.
(13) Chlordane (technical mixture and metabolites).
(14) Chlorinated benzenes (other than dichloro-benzenes).
(15) Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane).
(16) Chloroalkyl ethers (chloromethyl, chloroethyl, and mixed ethers).
(17) Chlorinated naphthalene.
(18) Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols).
(19) Chloroform.
(20) 2-chlorophenol.
(21) Chromium and compounds.
(22) Copper and compounds.
(23) Cyanides.
(24) DDT and metabolites.
(25) Dichlorobenzenes (1,2-, 1,3-, and 1,4- dichlorobenzenes).
(26) Dichlorobenzidine.
(27) Dichloroethylenes (1,1- and 1,2-dichloroethylene).
(28) 2,4-dichlorophenol.
(29) Dichloropropane and dichloropropene.
(30) 2,4-dimethylphenol.
(31) Dinitrotoluene.
(32) Diphenylhydrazine.
(33) Endosulfan and metabolites.
(34) Endrin and metabolites.
(35) Ethylbenzene.

(36) Fluoranthene.

(37) Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ether, bromophenylphenyl ether, bis(dischloroisopropyl) ether, bis(chloroethyoxy) methane and polychlorinated diphenyl ethers).

(38) Halomethanes (other than those listed elsewhere; includes methylene chloride methylchloride, methyl-bromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane).

(39) Heptachlor and metabolites.

(40) Hexachlorobutadiene.

(41) Hexachlorocyclohexane (all isomers).

(42) Hexachlorocyclopentadiene.

(43) Isophorone.

(44) Lead and compounds.

(45) Mercury and compounds.

(46) Naphthalene.

(47) Nickel and compounds.

(48) Nitrobenzene.

(49) Nitrophenols (including 2,4-dinitrophenol, dinitrocresol).

(50) Nitrosamines.

(51) Pentachlorophenol.

(52) Phenol.

(53) Phthalate esters.

(54) Polychlorinated biphenyls (PCBs).

(55) Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes).

(56) Selenium and compounds.

(57) Silver and compounds.

(58) 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD).

(59) Tetrachloroethylene.

(60) Thallium and compounds.

(61) Toluene.

(62) Toxaphene.

(63) Trichloroethylene.

(64) Vinyl chloride.

(65) Zinc and compounds.

(66) The term "compounds" shall include organic and inorganic compounds.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this amended regulation has been scheduled for June 28, 1994, at 10 a.m. (eastern time), in the Auditorium of the State Office Building at Mero and High Streets in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by June 23, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard 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 amended regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of business (4:30 p.m., eastern time) on June 28, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before June 23, 1994 between 8 a.m. and 4:30 p.m. (eastern time).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 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 regulation sets forth the criteria and standards for the Kentucky Pollutant Discharge Elimination System (KPDES) permit program. This regulation affects all wastewater dischargers in the Commonwealth, which represents over 9300 facilities. The proposed changes to this regulation are for the following reasons: Section 1 changes are due to January 4, 1989, federal regulations (40 CFR 125.3) which concern standards for technology-based treatment requirements. Sections 4 and 5 are being amended to delete definitions which are being placed into a new regulation (401 KAR 5:001). All other changes are to correct cross-references or to update to KRS Chapter 13A requirements.

(a) Direct and indirect costs or savings to those affected: None. Any direct or indirect costs or savings would have occurred when the applicable federal regulations went into effect. This is because KPDES is a delegated federal permit program subject to federal requirements which is administered by the state of Kentucky.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There are no competitive impacts between states, because the federal regulations are applied nationwide.

(b) Reporting and paperwork requirements: None. Any change in reporting or paperwork would have occurred when the applicable federal regulations took effect.

(2) Effects on the promulgating administrative body: None. Any effects on the agency would have occurred when the federal regulations became effective.

(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. These changes will not impact state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Kentucky's KPDES delegation authority prohibits the use of provisions less stringent than what would be imposed by the federal agency. These regulations adopt the federal standards.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administration regulation or government policy conflicts, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No regulation conflicts.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: These changes are being made to address modifications to the federal regulations which need to be incorporated into state regulations. This is necessary to maintain delegation of the NPDES permit program.

TIERING: Was tiering applied? Yes. To the extent that the original federal regulation changes provided for tiering, these administrative regulation changes are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

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 regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to any local government unit which operates facilities that discharge to waters of the Commonwealth.

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. None, because any impact on the expenditures and revenues of a local government would have occurred when the applicable federal regulation took effect. This may have led local governments to take actions (increase taxes or increase fees) to comply with the new federal regulations.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate on Kentucky to adopt this regulation. For Kentucky to maintain its delegation of authority over NPDES these amendments are being made. This involves the following federal regulation: 40 CFR 125.3.

2. State compliance standards. Section 1 of this regulation is being modified to match the referenced federal requirements. This section deals with criteria and standards for technology-based treatment requirements.

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards being proposed for this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 7:080. Small operator assistance.

RELATES TO: KRS 350.465, 30 CFR Parts 730-733, 735, 795, 917, 30 USC 1253, 1255, 1257

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 730-733, 735, 795, 917, 30 USC 1253, 1255, 1257

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This administrative regulation provides for cabinet assistance to eligible small operators, under the federally- funded small operator assistance program. This administrative regulation sets forth the scope, objectives, and sources and use of funds for the small operator assistance program in Kentucky; establishes eligibility criteria; establishes procedures and forms for filing for assistance; establishes notification procedures; sets forth the services to be provided under the program and the regulatory requirements to be addressed by those services; authorizes allocation if available funds are insufficient to serve all eligible applicants; establishes minimum standards for qualified laboratories; and requires reimbursement of the cabinet in certain circumstances. [~~This regulation sets out the federal small coal operator assistance program and establishes procedures to provide assistance to eligible operators who request assistance. The regulation specifies the assistance to be given to small operators whose total actual and attributed production does not exceed 300,000 tons during any consecutive twelve (12) month period.~~]

Section 1. Scope. (1) This administrative regulation establishes [~~comprises~~] the small operator assistance program (Program) authorized at KRS 350.465(2)(f).

(2) Consistent with 30 USC 1257(c) and 30 CFR Part 795, this administrative regulation shall govern [~~and governs~~] the procedures and criteria under which the cabinet shall provide [~~for providing~~] assistance to eligible small [~~mine~~] operators in meeting the [~~who request assistance for:~~

~~(1) The determination of the probable hydrologic consequences of mining and reclamation under Title 405, Chapter 8; and~~

~~(2) The statement of physical and chemical analyses of test borings or core samples under Title 405, Chapter 8; and~~

~~(3) Any other~~] requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 [~~for which financial or other assistance may be available under this Program~~].

(3) This administrative regulation shall be construed to allow the fullest possible extent of services consistent with federal requirements and available funds.

Section 2. Objective. The objective of this regulation is to meet the intent of KRS 350.465(2)(f) by:

(1) Providing financial and other necessary assistance to eligible small operators; and

(2) Assuring that the cabinet shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the watershed(s) and particularly upon water availability.

Section 3. Source and Use of Funds [~~Authority~~]. The secretary shall provide financial and other assistance under KRS 350.465(2)(f) to the extent that state funds are made available and to the extent that funds are appropriated by the United States Congress specifically for implementation of 30 USC 1257(c) [~~Section 507(c) of PL 95-87~~] and made available to the Commonwealth. [~~Federal funds specifically authorized for this program to provide the services specified in Section 4 of this regulation shall not be used to cover administrative costs.~~]

Section 4. Program Services. To the extent possible with available funds the cabinet shall provide services in accordance with this section.

(1) [,] For eligible small operators who request assistance, the cabinet shall [:

~~(1)~~] select and pay a qualified laboratory to perform the following services in accordance with Section 8 of this administrative regulation:

(a) Determine for the operator the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area, including the engineering analyses and designs necessary for the determination; [~~in accordance with Section 8 of this regulation; and~~]

(b) Perform geologic drilling and prepare a statement of the results of test borings or core samplings; [~~in accordance with Section 8 of this regulation.~~]

(c) Collect cultural, historic, and archaeological resources information and prepare necessary reports and plans;

(d) Perform preblasting surveys;

(e) Collect site-specific resource information and prepare plans for the protection and enhancement of fish and wildlife and other environmental values; and

(f) Develop cross sections, maps and plans required for permit applications, in accordance with 30 USC 1257(c).

(2) For eligible small operators who request assistance, the cabinet may select and pay a qualified laboratory to collect and provide general hydrologic information on the basin or subbasin areas within which the anticipated mining will occur. The information provided shall be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

(3) The cabinet shall provide informational services to insure that eligible small operators are made aware of the assistance available under the program.

(4) The cabinet shall make training services available to eligible small operators and their representatives and other potentially affected persons concerning preparation of permit applications and compliance with regulatory requirements.

Section 5. Eligibility for Assistance. An applicant shall be [~~is~~] eligible for assistance if he [~~or she~~]:

(1) Intends to apply for a permit pursuant to KRS Chapter 350;

(2) Establishes that the probable total actual and attributed production of the applicant from all locations during the twelve (12) months immediately following the date the permit is issued [~~any consecutive twelve (12) month period either during the term of the permit or during the first five (5) years after issuance of the permit, whichever period is shorter,~~] will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:

(a) The pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a five (5) percent interest;

(b) The pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than five (5) percent of the applicant's operation;

(c) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and

(d) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(3) Is not restricted in any manner from receiving a permit under Title 405, Chapters 7 through 24; and

(4) Does not organize or reorganize his [~~or her~~] company solely for the purpose of obtaining assistance under this administrative regulation.

Section 6. Filing for Assistance. The application form "Kentucky Small Operator Application for Assistance", revised October 1991, is hereby incorporated by reference. This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Each applicant shall submit the following information to the cabinet when filing for assistance:

(1) A statement of the operator's intent to file a permit application;

(2) The names and addresses of:

(a) The permit applicant; and

(b) The operator if different from the applicant.

(3) The names, addresses, and percentages of ownership of all owners of and stockholders in the applicant;

(4) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under Section 5(2) of this administrative regulation. The schedule shall include for each location:

(a) The operator or company name under which coal is or will be mined;

(b) The permit number and MSHA number if currently or previously permitted;

(c) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant; and

(d) Mine location (county).

(5) The Kentucky coal severance tax vendor number and copies of payments for the past twelve (12) months made by the applicant and any affiliated companies as defined under Section 5(2) of this administrative regulation;

(6) A description of:

(a) The proposed method of coal mining;

(b) The anticipated starting and termination dates of mining operations;

(c) The total number of acres of land to be affected by the proposed mining and number of acres (surface or underground) from which coal is to be removed;

(d) A general statement on the probable depth and thickness of the coal resource, and the name(s) of the coal seam(s) to be mined; and

(e) A statement identifying the coal resources in the permit area and the method by which they were calculated.

(7) A USGS topographic map of 1:6,000 scale or larger or other topographic map of equivalent detail which clearly shows:

(a) The area of land to be affected;

(b) The names of property owners within the area to be affected and of adjacent lands;

(c) The location and extent of known workings for the proposed underground mine; and

(8) Copies of documents which show that:

(a) The applicant has a legal right to enter and commence mining within the permit area; and

(b) A legal right of entry has been obtained for the cabinet and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental information [~~data~~] or to install necessary instruments.

Section 7. Application Approval and Notice. (1) If the cabinet finds the applicant eligible and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:

(a) Notify the applicant in writing that the application is approved;

(b) Determine the minimum information [~~data~~] requirements necessary to meet the provisions of Section 8 of this administrative regulation; and

(c) Select the services of one (1) or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved reports shall be provided to the applicant.

(2) If the cabinet finds the applicant ineligible, the applicant shall be informed in writing that the application is denied and the reasons for denial shall be stated.

(3) The granting of assistance under this administrative regulation shall not be a factor in decisions by the cabinet on a subsequent permit application.

Section 8. Information [~~Data~~] Requirements. (1) General. This section describes the minimum requirements for information necessary [~~the collection of data~~] to meet the objectives of this Program. The cabinet shall determine [~~the data collection requirements~~] for each applicant or group of applicants the specific information, including the collection and analysis of field information and the development of engineering and other technical analyses, designs, and plans, that shall be provided under this section. [~~Data~~] Collection, [~~and~~] analysis, and development of information under this section may

proceed concurrently with the development of mining and reclamation plans by the applicant.

(2) Specific provisions. Pursuant to Sections 1 through 4 of this administrative regulation, [~~data and~~] information required [~~to be contained in permit applications~~] under the administrative regulations listed in this subsection[~~,~~] may be supplied under this Program.

(a) Surface mines.

1. 405 KAR 8:030, Section 11(2); Cultural, historic, and archaeological resources information.

2. 405 KAR 8:030, Section 12; General requirements for geology and hydrology.

3. [~~2.~~] 405 KAR 8:030, Section 13; Geology information.

4. [~~3.~~] 405 KAR 8:030, Section 14; Groundwater information.

5. [~~4.~~] 405 KAR 8:030, Section 15; Surface water information.

6. [~~5.~~] 405 KAR 8:030, Section 16; Alternative water supply information.

7. [~~6.~~] 405 KAR 8:030, Section 17; Climatological information.

8. 405 KAR 8:030, Section 19; Vegetation information.

9. [~~7.~~] 405 KAR 8:030, Section 20; Fish and wildlife resources information. [~~(2)(c); Biological assessment of surface waters.~~]

10. 405 KAR 8:030, Section 23; Maps and drawings.

11. [~~8.~~] 405 KAR 8:030, Section 32(1); Description of measures to protect the hydrologic balance.

12. [~~9.~~] 405 KAR 8:030, Section 32(3); Determination of probable hydrologic consequences of mining.

13. [~~10.~~] 405 KAR 8:030, Section 32(4); Plan for monitoring groundwater and surface water.

14. 405 KAR 8:030, Section 36; MRP; fish and wildlife protection and enhancement.

15. 405 KAR 16:120, Section 2; Preblasting survey.

(b) Underground mines:

1. 405 KAR 8:040, Section 11(2); Cultural, historic, and archaeological resources information.

2. 405 KAR 8:040, Section 12; General requirements for geology and hydrology.

3. [~~2.~~] 405 KAR 8:040, Section 13; Geology information.

4. [~~3.~~] 405 KAR 8:040, Section 14; Groundwater information.

5. [~~4.~~] 405 KAR 8:040, Section 15; Surface water information.

6. [~~5.~~] 405 KAR 8:040, Section 16; Alternate water supply information.

7. [~~6.~~] 405 KAR 8:040, Section 17; Climatological information.

8. 405 KAR 8:040, Section 19; Vegetation information.

9. [~~7.~~] 405 KAR 8:040, Section 20; Fish and wildlife resources information. [~~(2)(c); Biological assessment of surface waters.~~]

10. 405 KAR 8:040, Section 23; Maps and drawings.

11. [~~8.~~] 405 KAR 8:040, Section 32(1); Description of measures to protect the hydrologic balance.

12. [~~9.~~] 405 KAR 8:040, Section 32(3); Determination of the probable hydrologic consequences of mining.

13. [~~10.~~] 405 KAR 8:040, Section 32(4); Plan for monitoring groundwater and surface water.

14. 405 KAR 8:040, Section 36; MRP; fish and wildlife protection and enhancement.

15. 405 KAR 18:120, Section 2; Preblasting survey.

(3) [~~Data~~] Availability of information. Information [~~Data~~] collected under this Program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment shall be made available.

Section 9. Allocation of Funds. If available funds are not sufficient to provide services under this regulation to all eligible applicants, the cabinet shall allocate the available funds among eligible applicants based upon a formula which shall include, but shall not be limited to, the following factors:

(1) Date of filing of application for assistance; and

(2) Anticipated date for commencing mining operations.

Section 10. Qualified Laboratories. (1) General.

(a) The cabinet shall establish a list of qualified laboratories which may be used by the cabinet under the procedures of this section. A qualified laboratory shall be a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination, statement, or other eligible services under this program.

(b) Persons who desire to be included in the list of qualified laboratories established by the cabinet shall apply to the cabinet and provide such information as is necessary to establish the qualifications required by subsection (2) of this section.

(2) Basic qualifications.

(a) To be designated a qualified laboratory, a firm shall demonstrate that it:

1. Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed.

2. Is capable of collecting necessary field information [~~data~~] and samples.

3. Has adequate space for material preparation and cleaning and sterilizing of necessary equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods.

4. Meets the requirements of the Occupational Safety and Health Act or the equivalent Commonwealth safety and health program.

5. Has the financial capability and business organization necessary to perform the work required.

6. Has analytical, monitoring, and measuring equipment capable of meeting the applicable standards and methods contained in: "Standard Methods for the Examination of Water and Waste Water," 14th Edition, 1975; "Methods for Chemical Analysis of Water and Wastes," 1974; and other references as specified by the cabinet.

7. Has the capability of making hydrologic field measurements and to conduct analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods or by those appropriate methods or guidelines for information [~~data~~] acquisition recommended by the cabinet.

(b) The qualified laboratory shall be capable of performing some or all of the services set forth in Section 8 of this administrative regulation. Subcontractors may be used to provide the services required if their use is defined in the application for qualification and they meet the requirements established by the cabinet.

Section 11. Applicant Liability. (1) The applicant shall reimburse the cabinet for the costs of the [~~laboratory~~] services performed pursuant to this administrative regulation:

(a) If the applicant submits false information;

(b) If the applicant fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory reports;

(c) If the applicant fails to mine after obtaining a permit;

(d) If the cabinet finds that the applicant's actual and attributed production of coal for all locations exceeds 300,000 tons during the twelve (12) months immediately following the date the permit is issued [~~any consecutive twelve (12) month period either during the term of the permit for which assistance is provided or during the first five (5) years after issuance of the permit, whichever is shorter~~]; or

(e) If the permit rights or the permit application is sold, transferred, or assigned to another person during the twelve (12) months immediately following the date the permit is issued and the transferee's total actual and attributed production exceeds the 300,000 ton annual production limit during the twelve (12) months immediately following the effective date of the sale, transfer, or assignment [~~any consecutive twelve (12) month period during the remaining term of the permit~~]. Under this paragraph, the applicant and its successor shall be [~~are~~] jointly and severally obligated to reimburse the cabinet.

(2) The cabinet may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (Eastern Time) Tuesday, June 28, 1994 in the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by Thursday, June 23, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by Thursday, June 23, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern Time) on Tuesday, June 28, 1994. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to:

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This administrative regulation specifies the financial and other assistance to be provided to eligible small coal mine operators under the federally-funded Small Operator Assistance Program (SOAP). This proposed amendment significantly expands the scope of services available under this program and relaxes reimbursement requirements. There are an estimated 450 small operators in Kentucky eligible for assistance under the SOAP program. This proposed amendment potentially affects all of them by offering an expanded scope of services and relaxed reimbursement requirements.

Section 2513 of the federal Energy Policy Act of 1992 (PL 102-486) amended Section 507(c) of the Surface Mining Control and Reclamation Act of 1977 (30 USC 1257(c))to authorize funding of expanded services. The federal Office of Surface Mining has not yet revised its regulations at 30 CFR 795 to reflect these statutory changes, but intends to do so. OSM has advised that states may submit, and OSM will approve, program amendments reflecting the statutory changes so states can proceed to deliver the expanded scope of services, recognizing that it may be necessary later to again revise the state programs after the final federal regulations are published. This proposed amendment implements the expanded scope of services and relaxes the reimbursement requirements consistent with the 1992 Energy Policy Act.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs to those affected. Under this amendment, a small operator receiving services under the SOAP program may be able to save several thousand dollars in permitting costs. The amount of the savings will depend upon the actual services needed on a particular permit application.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None. The cabinet points out that under certain conditions an operator who has received SOAP assistance may be required to reimburse the cabinet for the cost of that assistance, but the criteria that require reimbursement in the proposed amendment are less stringent than at present.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a major increase in operating costs because the scope of services has been greatly expanded. These services are 100% federally funded under the cabinet's annual SOAP grant from OSM. The cabinet expects an increase in the range of $200,000-250,000 in expenditures in the remainder of calendar 1994 due to the increased scope of services.

2. Continuing costs or savings: Operating costs will continue to be higher than at present, due to the expanded scope of services.

3. Additional factors increasing or decreasing costs: Operating costs are likely to increase in future years, as more small operators elect to participate in the program. The expanded scope of services is expected to attract more operators to the program and help keep more small operators in business.

(b) Reporting and paperwork requirements: The proposed amendment does not specifically mandate any additional reporting and paperwork, but the overall burden of recordkeeping and general paperwork will necessarily increase along with the expanded scope of services.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.

(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: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because federal law and regulations establish the eligibility criteria and the scope of assistance available under this program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1257; 30 CFR Parts 730-733, 735, 795, 917.

2. State compliance standards. This administrative regulation specifies the financial and other assistance to be provided to eligible small coal mine operators under the federally-funded Small Operator Assistance Program (SOAP). This proposed amendment significantly expands the scope of services available under this program. Revised 405 KAR 7:080 Section 4(1)(a)-(b) and new 4(1)(c)- (f) expand the permitting assistance to include: (a) the determination of probable hydrologic consequences and the engineering analyses and designs necessary for the determination; (b) performing geologic drilling and preparing a statement of the results of test borings or core samplings; (c) collecting cultural, historic and archaeological resources information and preparing necessary reports and plans; (d) performing preblasting surveys; (e) collecting site specific resource information and preparing plans for the protection and enhancement of fish and wildlife and other environmental values; and (f) developing cross sections, maps and plans required for permit applications. Revised Section 8(1) lists the specific sections of 405 KAR 8:030, 8:040, 16:120 and 18:120 that correspond to the services authorized in revised Section 4(1). New Section 4(3) requires the cabinet to provide informational services to insure that eligible operators are made aware of the services available. New Section 4(4) requires the cabinet to offer training services to eligible operators, their representatives,

and other potentially affected persons, concerning preparation of permit applications and compliance with regulatory requirements. The eligibility criteria in Section 5(2) and the reimbursement criteria in Section 11(1)(d) are revised to fix the twelve-month period immediately following permit issuance as the period during which the operator's total attributed tonnage from all operations must not exceed 300,000 tons. Presently, in order to remain eligible for assistance and avoid the obligation to reimburse the cabinet for the cost of services provided, the operator must not produce more than 300,000 tons during any period of twelve consecutive months, for the shorter of the permit term or the first five years after the permit is issued. Section 11(1)(e) is revised regarding the reimbursement criteria for SOAP-assisted permits whose rights are sold, transferred, or assigned. The transfer period of concern is limited to the twelve months immediately following the date the permit is issued, and the 300,000 ton production limit applies only during the twelve months immediately following the effective date of the sale, transfer or assignment. Presently, these criteria apply throughout the entire remaining term of a permit after the sale, transfer or assignment.

3. Minimum or uniform standards contained in the federal mandate. Section 2513 of the federal Energy Policy Act of 1992 (PL 102-486) amended Section 507(c)(1) of the Surface Mining Control and Reclamation Act of 1977 (30 USC 1257(c)(1)) to authorize funding of expanded services for:

(a) the determination of probable hydrologic consequences required by 507(b)(11), including the engineering analyses and designs necessary for the determination;

(b) the development of cross-section maps and plans required by 507(b)(14);

(c) the geologic drilling and statement of results of test borings and core samplings required by 507(b)(15);

(d) the collection of archaeological information required by 507(b)(13) and any other archaeological and historical information required by the regulatory authority, and the preparation of plans necessitated thereby;

(e) preblast surveys required by 515(b)(15)(E); and

(f) the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the regulatory authority.

Section 507(c)(2) requires the Secretary of the Interior to provide or assume the cost of training qualified coal operators concerning the preparation of permit applications and compliance with the regulatory program, and requires the secretary to ensure that qualified coal operators are aware of the assistance available.

Section 507(h) requires an operator that has received assistance under 507(c)(1) or 507(c)(2) to reimburse the regulatory authority for the cost of the services rendered if the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 month period immediately following the date of issuance of the permit. This is less stringent than the current federal regulations in 30 CFR 795.

The federal Office of Surface Mining has not yet revised its regulations at 30 CFR 795 to reflect these statutory changes, but intends to do so. OSM has advised that states may submit, and OSM will approve, program amendments reflecting the statutory changes so states can proceed to deliver the expanded scope of services, recognizing that it may be necessary later to again revise the state programs after the final federal regulations are published.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This proposed amendment is fully consistent with the federal mandate as described above. This proposed amendment implements the expanded scope of services and relaxes the reimbursement requirements consistent with the 1992 Energy Policy Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards, responsibilities, and requirements are the same as the federal counterparts.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes 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 May 12 [~~April 15~~], 1994, are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Kentucky 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.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.1	Occupational Exposure to Bloodborne Pathogens
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services (Amended 5/12/94)

13.3 Medical Alert System
13.4 Health Program Audits
13.5 Acquired Immune Deficiency Syndrome
13.6 Sex Offender Treatment Program
13.9 Dental Services
14.2 Personal Hygiene Items
14.3 Marriage of Inmates
14.4 [~~14-04-01~~] Legal Services Program (Amended 5/12/94)
14.6 Inmate Grievance Procedures
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties
15.3 Meritorious Good Time
15-05-01 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
15.7 Inmate Account Restriction
16.1 Inmate Visits
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages
17-01-01 Inmate Personal Property
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.1 Classification of the Inmate
18.5 Custody/Security Guidelines (Amended 5/12/94)
18.6 Classification Document
18.7 Transfers
18.9 Out-of-state Transfers
18-10-01 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
19.3 Inmate Wage Program
20.1 Educational Programs and Educational Good Time
21.1 Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
21.2 Phase I: Program Selection Assessment Criteria
21.3 Program Schedule - Phase II and Phase III
21.4 Platoon Size and Composition
21.5 Physical Conditions Program Component
21.6 Group and Individual Counseling
21.7 Drug and Alcohol Abuse Counseling and Treatment
21.8 Work Programs Component
21.9 Education and Life Management
21.10 Auxiliary Services
21.11 Offenses and Penalties
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program
25.4 Inmate Furloughs
25.6 Community Center Program [~~(Amended 4/15/94)~~]
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates [~~(Amended 4/15/94)~~]
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-08-01 Use of Force
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions
27-13-01 Drug and Alcohol Testing of Offenders
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
27-15-01 Supervision Report; Violations, Unusual Incidents
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01 Absconder Procedures
27-18-01 Probation and Parole Issuance of Detainer/Warrant
27-19-01 Preliminary Revocation Hearing
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
27-20-03 Prisoner Status Change
27-21-01 Apprehension and Transportation of Probation and Parole Violators
27-22-01 Fugitive Unit - Apprehensions
27-22-02 Fugitive Unit - Transportation of Fugitives
27-23-01 In-state Transfer
27-24-01 Closing Supervision Report
27-24-02 Reinstatement of Clients to Active Supervision
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)

28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: May 12, 1994

FILED WITH LRC: May 12, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 22, 1994, at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601 or Louis Smith, Office of Adult Institutions, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner and because the regulation applies equally to all employees, inmates, parolees and visitors. Disparate treatment of any of these classes may produce complaints by that class and could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be violated as well as Sections 2 and 3 of the Kentucky Constitution which prohibit unequal or arbitrary treatment of persons.

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 May 12 [~~April 15~~], 1994, 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
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities
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 or Death
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 (Amended 5/12/94)
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
KSR 10-01-09	Unit D - Hold Ticket Residents
KSR 10-02-01	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training, Time and Attendance [~~(Amended 4/15/94)~~]
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care
KRS 10-02-04	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: General Operating Procedures [~~(Amended 4/15/94)~~]
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	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Program Description [~~(Amended 4/15/94)~~]
KSR 13-02-05	Access to Intensive Services Programs Operated at Kentucky State Reformatory by the Division of Mental Health [~~(Added 4/15/94)~~]
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
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
KSR 16-01-03	Night Visit Regulations
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 (Amended 5/12/94)
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 20-00-06	English as a Second Language
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 22-00-08	Privilege Trips
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: May 12, 1994
FILED WITH LRC: May 12, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 22, 1994 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: 519 employees of the Kentucky State Reformatory, 1283 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 Amendments)

501 KAR 6:120. Blackburn 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 by 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 May 12 [~~April 15~~], 1994, are incorporated by reference and shall be referred to as Blackburn Correctional Complex 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 8 a.m. to 4:30 p.m.

BCC 01-05-01	Duty Officer and Acting Warden
BCC 01-07-01	Extraordinary Occurrence Reports
BCC 01-09-01	Legal Assistance for Staff
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-15-01	Internal Affairs Office
BCC 01-16-01	Tours of Blackburn Correctional Complex
BCC 01-19-01	Inmate Access to BCC Staff
BCC 02-01-01	Inmate Canteen [~~(Amended 4/15/94)~~]
BCC 02-02-01	Fiscal Responsibility
BCC 02-02-02	Fiscal Management: Accounting Procedures
BCC 02-02-03	Fiscal Management: Checks [~~(Amended 4/15/94)~~]
BCC 02-02-04	Fiscal Management: Budget
BCC 02-02-05	Fiscal Management: Insurance
BCC 02-02-06	Fiscal Management: Audits
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract
BCC 02-05-01	Property Inventory
BCC 02-06-01	Purchasing
BCC 02-07-01	Inmate Personal Accounts
BCC 04-02-01	Firearms Training
BCC 04-03-01	Educational Assistance Program
BCC 05-01-01	Inmate Participation in Authorized Research
BCC 06-01-01	Storage of Expunged Records
BCC 06-02-01	Records - Release of Information
BCC 06-02-02	Offender Records
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board
BCC 08-02-01	Natural Disaster Plan (Tornado)
BCC 08-03-01	Emergency Preparedness Plan Manual
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties
BCC 08-04-02	Immediate Release of Inmates from Locked Areas
BCC 08-05-01	Duties of Fire Safety Officer
BCC 08-06-01	Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
BCC 08-07-01	Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers
BCC 09-01-01	Inclement Weather/Emergency Condition Operation
BCC 09-02-01	Restricted Areas
BCC 09-02-02	Inmate Pass System to Restricted Areas
BCC 09-02-03	Regulation of Inmate Movement
BCC 09-02-04	Radio Escorted Yard Movement During Daylight Savings Time (November 1 - April 30)
BCC 09-03-01	Inmate Identification [~~(Amended 4/15/94)~~]
BCC 09-04-02	Complex Entry & Exit
BCC 09-05-01	Key Control
BCC 09-06-02	Transportation to Courts
BCC 09-07-01	Drug Abuse and Intoxicants Testing
BCC 09-08-02	Use of Restraints
BCC 09-09-01	Population Counts and Count Documentation
BCC 09-10-03	Development of Institutional Post Orders
BCC 09-10-04	Governmental Services, Study Release Officer Post

Orders
BCC 09-10-05 Unit A-1 Post Orders
BCC 09-10-06 Recreation Post Orders: Observation
BCC 09-10-07 Entrance Gate Post Orders
BCC 09-10-08 Visiting Area Post Orders
BCC 09-10-09 Security Staff General Orders
BCC 09-10-10 Dining Room Officer Post Orders
BCC 09-12-01 Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment
BCC 09-13-01 Perimeter Patrol
BCC 09-14-01 Prohibiting Inmate Authority Over Other Inmates
BCC 09-15-01 Search Policy/Disposition of Contraband
BCC 09-16-01 Security Activity Logs
BCC 09-17-01 Institutional Supervisor Inspections
BCC 09-18-01 Use of State Vehicles and Staff Owned Vehicles
BCC 09-19-01 Duties and Responsibilities of the Institutional Captain
BCC 09-19-02 Duties and Responsibilities of the Shift Supervisor
BCC 09-20-01 Inmate Death
BCC 09-21-01 Tool Control
BCC 09-22-01 Emergency Communication System
BCC 10-01-01 Special Management Inmates
BCC 10-01-02 Short-Term Administrative Segregation Holding Area
BCC 11-01-01 Menu and Special Diets
BCC 11-02-01 Food Service: Inspection, Health Protection and Sanitation
BCC 11-03-01 Food Service: Meals
BCC 11-04-01 Dining Room Guidelines
BCC 11-05-01 Food Service Security: Knife & Other Sharp Instrument/Utensil Control
BCC 11-06-01 Purchasing, Storage and Farm Products
BCC 11-07-01 Food Service Operations Manual
BCC 12-02-01 Personal Hygiene Items
BCC 12-02-02 Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities
BCC 12-05-01 Barber Shop Services
BCC 12-06-01 BCC Housekeeping Plan
BCC 13-01-01 Sick Call and Pill Call
BCC 13-02-01 Administration and Authority for Health Services
BCC 13-03-01 Provisions of Health Care Delivery
BCC 13-04-01 Licensure and Training Standards
BCC 13-05-01 Medical Alert System
BCC 13-06-01 Health Care Practices
BCC 13-07-01 Emergency Medical Care Plan
BCC 13-07-02 Emergency and Specialized Health Services
BCC 13-07-03 Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent
BCC 13-08-01 Inmate Health Screening and Evaluation
BCC 13-09-01 Prohibition on Medical Experimentation
BCC 13-10-01 Dental Services
BCC 13-11-01 Suicide Prevention and Intervention Program
BCC 13-12-01 Use of Pharmaceutical Products
BCC 13-12-02 Parenteral Administration of Medications and Use of Psychotropic Drugs
BCC 13-13-01 Inmate Health Education
BCC 13-14-01 Management of Serious and Infectious Diseases
BCC 13-15-01 Informed Consent
BCC 13-16-01 Health Records
BCC 13-17-01 Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 13-19-01 Physicians Referrals/Continuity of Care
BCC 13-20-01 Chronic and Convalescent Care
BCC 13-22-01 Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers
BCC 13-23-01 First Aid Kits
BCC 14-01-01 Office of Public Advocacy Attorney Visits
BCC 14-02-01 Law Library
BCC 14-03-01 Inmate Grievance Procedure
BCC 14-04-01 Inmate Rights and Responsibilities
BCC 14-05-01 Inmate Claims
BCC 14-06-01 Legal and Support Services for Indigent Inmates
BCC 15-02-01 Meritorious Living Unit (B-1)
BCC 15-02-02 Room Assignment
BCC 15-03-01 Rules and Regulations for Dormitories
BCC 15-04-01 Restoration of Forfeited Good Time
BCC 15-05-01 Extra Duty Assignments
BCC 16-01-01 Inmate Furloughs
BCC 16-02-01 Inmate Visiting [~~(Amended 4/15/94)~~]
BCC 16-03-01 Inmate Packages
BCC 16-03-02 Outgoing Inmate Packages [~~(Amended 4/15/94)~~]
BCC 16-03-03 Inmate Correspondence
BCC 17-02-01 Authorized Inmate Personal Property (Amended 5/12/94)
BCC 17-03-01 Processing of New Inmates From Local Jails
BCC 18-01-01 Classification: Institutional Classification and Reclassification
BCC 18-02-01 Racial Balance in Living Areas
BCC 19-01-01 Inmate Work Programs
BCC 19-02-01 Classification of Inmates to Governmental Service Program
BCC 19-03-01 Correctional Industries
BCC 20-01-01 Academic and Vocational School
BCC 20-02-01 College Programs
BCC 20-04-01 Educational Program Evaluation
BCC 20-05-01 Educational Program Planning
BCC 20-06-01 Academic and Vocational Curriculum
BCC 21-01-01 Library Services
BCC 22-01-01 Arts and Crafts/Production and Sale of Items
BCC 22-02-01 Privileged Trips
BCC 22-03-01 Recreational Employees
BCC 22-04-01 Recreation and Inmate Activities
BCC 22-04-02 Inmate Clubs and Organizations
BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs
BCC 22-04-04 Recreation Program Availability
BCC 22-04-05 Supervision of Leisure-time Craft Club Activities and Materials
BCC 22-06-01 Music Club
BCC 22-08-01 Unit Recreation Program
BCC 22-09-01 Use of Inmates in Recreation Programs
BCC 23-01-01 Religious Services
BCC 24-01-01 Duties and Responsibilities of Classification and Treatment Officers [~~(Amended 4/15/94)~~]
BCC 24-02-01 Duties and Responsibilities of the Unit Director and Assistant to the Unit Director [~~(Amended 4/15/94)~~]
BCC 24-03-01 Social Services [~~(Amended 4/15/94)~~]
BCC 25-01-01 Inmate Check Out Procedure
BCC 25-02-02 Temporary Release and Community Center Release [~~(Amended 4/15/94)~~]
BCC 25-05-01 Supplemental Preparole Progress Reports [~~(Amended 4/15/94)~~]
BCC 26-01-01 Citizen Involvement and Volunteer Service Program [~~(Amended 4/15/94)~~]

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 12, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 22, 1994, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or 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: 105 employees of the Blackburn Correctional Complex, 414 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 Vehicle Enforcement
(Proposed Amendment)

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Parts 40, 382-383, 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750, Title 49, Code of Federal Regulations, Parts 40, 382-383, 390-397

NECESSITY AND FUNCTION: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. This administrative regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using a vehicle:

(a) To transport agricultural products from his farm;

(b) To transport farm machinery or farm supplies to his farm; or

(c) Generally thought of as farm machinery; and

(d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Load limit" means the [~~rated~~] seating capacity established by the manufacturer for [~~which~~] a passenger-carrying vehicle [~~is licensed~~] plus an additional twenty-five (25) percent [~~of the rated seating capacity~~].

Section 2. Governing Federal Regulations. All commercial motor vehicles operated for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) Title 49, Code of Federal Regulations Part 40, Procedures for Transportation Workplace Drug Testing Programs effective as amended through October 1, 1992;

(2) Title 49, Code of Federal Regulations Part 382, Controlled Substances and Alcohol Use and Testing effective as amended through March 17, 1994;

(3) Title 49, Code of Federal Regulations Part 383, Commercial Driver's License Standards; Requirements and Penalties, effective as amended through November 9, 1992;

(4) [~~(2)~~] Title 49, Code of Federal Regulations Part 390, General, effective as amended through January 20, 1994 [~~August 23, 1993~~];

(5) [~~(3)~~] Title 49, Code of Federal Regulations, Part 391, Qualifications of Drivers, effective as amended through March 17, 1994 [~~June 21, 1993~~];

(6) [~~(4)~~] Title 49, Code of Federal Regulations, Part 392, Driving of Motor Vehicles, effective as amended through March 17, 1994 [~~November 15, 1988~~];

(7) [~~(5)~~] Title 49 Code of Federal Regulations, Part 393, Parts and Accessories Necessary for Safe Operation, with a latest effective date of November 24, 1989;

(8) [~~(6)~~] Title 49, Code of Federal Regulations, Part 395, Hours of Service of Drivers, effective as amended through March 17, 1994 [~~August 31, 1992~~];

(9) [~~(7)~~] Title 49, Code of Federal Regulations, Part 396, Inspection, Repair and Maintenance, as effective October 8, 1992; and

(10) [~~(8)~~] Title 49, Code of Federal Regulations, Part 397, Transportation of Hazardous Materials; Driving and Parking Rules, effective as amended through September 24, 1992.

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this regulation are adopted:

(1) City buses, suburban buses, taxicabs, motorcycles and motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation. Except that any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall comply with the provisions of 49 CFR Part 383 and provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) [~~(8)~~] of this section.

(2)(a) Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education and vehicles operating in interstate commerce which are specifically excluded by Title 49, Code of Federal Regulations, Part 390 are not required to comply with the federal regulations adopted in this administrative regulation.

(b) In spite of the requirements specified in paragraph (a) of this subsection, any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in

49 CFR Part 391 or having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) [~~(8)~~] of this section.

(3) Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4) Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) Except for transporters of hazardous materials under 601 KAR 1:025, motor vehicle operators who are operating a vehicle on an intrastate commerce basis are not required to be twenty- one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, they shall be at least eighteen (18) years of age.

(6) Electric utility motor carriers while operating exclusively in intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency which requires their employees to work to restore electric power.

(7) [~~Motor carriers which operate exclusively in intrastate commerce shall be exempt from the drug testing requirements of 49 CFR Parts 391 and 394.~~

~~(8)~~] A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040. If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

(8) [~~(9)~~] Motor carrier vehicles operated exclusively in intrastate commerce may comply with the provisions of 601 KAR 1:160 rather than 49 CFR Part 390.21.

Section 4. Buses. (1) Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) Seats shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) All operators shall take into consideration the health and welfare of their passengers and control their operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doorwell.

Section 6. [~~Cargo Securement. (1) The "CVSA Cargo Securement Tie-down Guidelines" adopted on February 15, 1992 by the Commercial Vehicle Safety Alliance is hereby incorporated by reference as part of this administrative regulation. The criteria in this document shall apply to the devices used in securing loads to commercial motor vehicles.~~

~~(2) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be inspected, copied or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.~~

~~Section 7.~~] Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial driver or vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" adopted on June 21, 1993 by the Commercial Vehicle Safety Alliance. The criteria are incorporated by reference as a part of this administrative regulation.

(2)(a) If a commercial vehicle is being operated either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the motor vehicle is further operated.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer to conduct a safety inspection of the vehicle shall be cause for the officer to place the vehicle out-of-service until the permission is granted. Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3) If a commercial driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle. However, the commercial driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified. Refusal of the commercial driver to grant permission for a law enforcement officer to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted. Operating a commercial motor vehicle in violation of an out-of- service order shall constitute a separate violation of this administrative regulation.

(4) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be inspected, copied or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: May 13, 1994
FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on June 23, 1994 at 2 p.m. local prevailing time in the Transportation Cabinet, Room 1003 of the State Office Building, 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 June 18, 1994, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. 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 June 18, 1994. 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 the close of business on June 23, 1994. 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

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: 30,000 motor carriers operating in Kentucky; 792,000 commercial trucks registered in Kentucky; and 118,000 commercial drivers licensed in Kentucky.

(a) Direct and indirect costs or savings to those affected: Radar Detector Ban - Of the 792,000 commercial trucks which are registered in Kentucky, it is estimated that 40% or 316,000 of them have radar detectors. While the radar detectors will not have to be thrown away, they will not be eligible for use in a commercial vehicle anywhere in the nation. The estimated safety benefits resulting from the reduction in the severity of accidents is estimated at $68 million per year on a national basis. The proportional savings in Kentucky should exceed $1.25 million which will more than compensate for the loss of the use of the detectors.

Alcohol and Controlled Substances Testing - Alcohol testing has been added to the requirement for drug testing. The cost of each individual portable testing units is $2000. However, debate continues as to the number of testing units that will be needed across the state. The Federal Highway Administration has estimated that each test will cost $25 and there should be about 120,000 of the alcohol tests performed each year with an annual cost of approximately $3 million to the motor carriers in Kentucky. While drug testing was already required for the commercial drivers operating in interstate commerce, about 18,000 commercial drivers who were operating exclusively in intrastate commerce were exempt from the drug testing requirements. The average cost of an individual drug test is $100 and there will be an additional 15,000 drug tests performed each year for a total cost of $1.5 million.

The repeal of the "CVSA Cargo Securement Tie-Down Guidelines" will have no cost effect on the motor carrier industry. The industry has argued that the tie-down standards already adopted in 49 CFR Part 393 are equivalent.

1. First year: Radar Detector Ban - The savings in accident costs should be over $1.25 million.

Alcohol and Controlled Substances Testing - The cost to the Kentucky motor carriers will exceed $4.5 million the first year because of the $3 million estimated cost of purchasing the alcohol breath testing units.

2. Continuing costs or savings: For Radar Detector Ban - A continuing savings of $1.25 million each year. Alcohol and Controlled Substances Testing - $4.5 million continuing cost each year.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): Radar Detector Ban - None

Alcohol and Controlled Substances Testing - All motor carriers will experience a loss in productivity since the federal regulations define the test-taking time as "on-duty".

(b) Reporting and paperwork requirements: The results of all alcohol and controlled substances tests must be maintained and summarized for the federal government.

(2) Effects on the promulgating administrative body: Radar Detector Ban - None

Alcohol and Controlled Substances Testing - As the promulgating agency there will be no effects. However, the promulgating agency is also an affected entity and the costs shown under (1) will be partially the responsibility of the Transportation Cabinet.

(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: There were no alternatives to the federal mandates. The Federal Highway Administration mandated the ban with its amendments to 49 CFR Part 392 and added alcohol testing for all commercial drivers and controlled substances testing for intrastate commercial drivers in 49 CFR Part 382. Regarding the repeal of the "Cargo Securement Tie-Down Guidelines", the state of New York lost a law suit filed by the motor carrier industry on the guidelines. The Federal Highway Administration recommended that the states follow only the provisions of 49 CFR Part 393 in the near future. With the potential of losing a lawsuit, the Commonwealth chose to repeal the "Guidelines" prior to a suit. However, the Commonwealth is strongly urging the Federal Highway Administration to incorporate the "Guidelines" into Part 393.

(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? Yes. The administrative regulation is tiered in that more stringent safety requirements are expected to be met on larger vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 390 - 399. These federal regulations extensively reference 49 CFR Part 383 relating to the commercial driver's license.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Part 40, Parts 382 - 383 and 390 - 397. To date the Federal Highway Administration has agreed that it is not necessary for Kentucky to adopt 49 CFR Part 398 relating to the transportation of migrant workers and 49 CFR Part 399 relating to motor carrier employee safety and health standards.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

a) Commercial Driver' License standards for the issuance, testing and withdrawal of a CDL;

b) Establishes 0.04% BAC as the level at which an operator of a commercial vehicle is considered to be DUI;

c) Establishes the maximum number of hours a commercial driver may be on-duty and how he must keep a record of the amount of time he has worked;

d) Establishes the qualifications for a commercial driver including his physical fitness, age, emotional condition, prior driving history and a drug testing program for interstate and intrastate motor carriers;

e) Defines the safe method in which a commercial vehicle must be operated including stopping at railroad crossings; cease driving when ill or fatigued; not to use drugs or alcohol while operating a commercial vehicle; conformance with the speed limit; required use of turn signals; use of seat belts; use of emergency flashers when the commercial vehicle is stopped on the highway; use of lights on the commercial vehicle; duty in case of an accident; and fueling precautions;

f) Defines the parts and accessories necessary for the safe operation of a commercial vehicle;

g) Establishes a formal maintenance and repair schedule and records for the safe operation of a commercial vehicle and requires the maintenance and inspections to be preformed by certified inspectors or mechanics; and

h) Driving and parking rules while transporting hazardous materials.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. In fact, Kentucky with reluctantly given federal approval has imposed slightly less restrictive standards on intrastate drivers. For example, intrastate motor carriers have a minimal medical waiver program. However the medical waiver program for intrastate commercial drivers has been expanded. Unless operating a school bus or transporting hazardous materials, the intrastate Kentucky driver must only be 18 rather than 21, and farmers in daylight hours have less restrictive lighting requirements than the operators of other commercial vehicles.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The less stringent requirements for intrastate motor carriers were adopted to allow Kentucky companies to continue operating as they had been doing for years. The Transportation Cabinet was strongly petitioned by legislators and public interest groups to allow these exemptions.

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

603 KAR 5:050. Uniform traffic control devices.

RELATES TO: KRS 189.337

STATUTORY AUTHORITY: KRS 189.337, 23 CFR Part 655 Subpart F

NECESSITY AND FUNCTION: KRS 189.337(2) requires the Transportation Cabinet, Department of Highways, to adopt a uniform system of traffic control devices. The Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the Manual on Uniform Traffic Control Devices. This administrative regulation defines the system by incorporating by reference the Manual on Uniform Traffic Control Devices.

Section 1. Traffic Control Devices on All Public Highways. The standards and specifications set forth in the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways" shall apply to all traffic control devices installed on any publicly used highway, road or street in Kentucky.

Section 2. Incorporation by Reference. A copy of the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways 1988 Edition" revised January 23, 1989 is hereby incorporated by reference as part of this administrative regulation.

Section 3. Availability of Manual. Copies of the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways" may be viewed or copied at the Transportation Cabinet, Department of Highways, Division of Traffic, 501 High Street, First Floor, in Frankfort, Kentucky from 8 a.m. until 4:30 p.m. weekdays. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 4. Federal Amendments to the Manual. (1) The revision to the Manual on Uniform Traffic Control Devices discussed in Federal Highway Administration Final Rule Docket 87-21, Notice No. 3, effective January 17, 1990 is hereby incorporated by reference as a part of this administrative regulation.

(2) The revision to the Manual on Uniform Traffic Control Devices discussed in Federal Highway Administration Final Rule Docket 87-21, effective March 17, 1992 is hereby incorporated by reference as a part of this administrative regulation.

(3) Part VI of the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration on September 3, 1993 and effective January 10, 1994 is hereby incorporated by reference as a part of this administrative regulation.

(4) Copies of the Federal Highway Administration revisions to the Manual on Uniform Traffic Control Devices for Streets and Highways may be obtained, viewed or copied at the Transportation Cabinet, Department of Highways, Division of Traffic, 501 High Street, First Floor, in Frankfort, Kentucky from 8 a.m. until 4:30 p.m. weekdays.

J.M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: April 8, 1994
FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on June 23, 1994 at 10 a.m. local prevailing time in the Transportation Cabinet, 1003 State Office Building, 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 June 18, 1994 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 June 18, 1994. 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. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until the close of business on June 23, 1994. 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

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All governmental

agencies in Kentucky responsible for any type of traffic control device.

(a) Direct and indirect costs or savings to those affected: There will be no cost or savings to the public entities governed by The Manual on Uniform Traffic Control Devices as a result of the latest revision incorporated by reference.

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: The Transportation Cabinet is both an affected entity and the promulgating agency. There will be no cost or savings as a result of the two revisions incorporated by reference.

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: There is a federal mandate requiring all traffic control in work zones and all newly installed traffic control devices to comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD). Therefore there was no option but to adopt these changes.

(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? Yes. The amount of signage and the use of traffic control devices is tiered based on the type and usage of the particular highway or street.

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. The Department of Highways or Roads or Public Works in all city and county governments.

3. State the aspect or service of local government to which this administrative regulation relates. Placement of traffic signs and pavement marking on public highways and streets. Traffic control methods in highway work zones.

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 in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: The local government agencies will be able to implement these changes to the manual as part of their regular road and street maintenance budgets.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 655 Subpart F.

2. State compliance standards. Kentucky has adopted and been guided by the mandated Manual on Uniform Traffic Control Devices for many years.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

a) The listing of the type of signs and their placement required on each highway type;

b) Establishes the type and placement of pavement markings required on each highway type; and

c) Traffic controls to be used in construction, maintenance or utility work zones.

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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 156.0951, 158.070

STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070

NECESSITY AND FUNCTION: KRS 156.095 and 156.0951 authorize the State Board for Elementary and Secondary Education to establish, direct, and maintain a statewide program of professional development training, with the relevant purpose of such a program being the improvement of instruction in the public schools, and mandate local school district consortia for professional development purposes; and KRS 158.070 requires the state board to adopt administrative regulations setting forth guidelines and procedures to be followed for the approval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for professional development activities for the professional staff. This administrative regulation implements these duties and powers. It identifies the components of professional development planning and requires each school, local district, and consortium of districts to submit annually professional development plans by which they are to be guided in providing suitable professional development training programs and in requiring all instructional leaders to participate in the statewide training program implemented under KRS 156.101.

Section 1. Definitions. The following definitions shall apply to this administrative regulation:

(1) "Professional development" means activities and experiences which enable educators to improve their skills and abilities or increase their understanding and knowledge to better facilitate the learning of children, and which shall be determined by identified needs and related to the goals of the Kentucky Education Reform Act (KERA).

(2) "Needs assessment" means the gathering, sorting, and analysis of data that lead to conclusions regarding the need for professional development in identified areas.

(3) "Professional development plan" means an outline of a process to achieve defined standards, goals, or objectives that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished.

Section 2. Each professional development consortium, school, and local district shall have on file with the State Department of Education a professional development plan that meets the following seven (7) standards:

(1) The goals, objectives, and sessions or experiences of plans are focused on the goals of KERA;

(2) The plan was developed through active participation and input

at the local school level;

(3) The plan gives attention to professional growth needs at different stages of development (i.e., orientation, preparation, implementation, impact);

(4) The plan provides sufficient opportunities for professional growth in designated KERA goals throughout the school year;

(5) The plan provides professional development sessions, experiences, and activities that directly address the needs identified in the needs assessment;

(6) The plan describes standards and a process that ensure the delivery of high quality professional development sessions, experiences, and activities; and

(7) The plan describes a structure and process for evaluating professional development sessions, experiences, and activities and for making subsequent improvements in the professional development program.

Section 3. The professional development plan shall include the following components:

(1) Name of consortium, district, or school;

(2) Persons involved in the planning process;

(3) Description of needs assessment, including a brief description of procedures implemented to determine how the professional development needs were assessed and the results of the assessment;

(4) Description of planning process;

(5) A description of specific professional development sessions, experiences, and activities planned to accomplish the goals and objections; and

(6) A description of evaluation, including:

(a) An explanation of how professional development sessions, experiences, and activities implemented and operated at all levels shall be evaluated; and

(b) A description of how the professional development plan shall be evaluated.

Section 4. (1) The professional development plan shall address any instructional improvement or training needs that are in accordance with the goals of KERA.

(2) Professional development activities shall be related to teachers' instructional assignments and administrators' professional responsibilities. Activities shall support the local school's instructional improvement goals and objectives identified in the professional development plan.

(3) Activities for professional development credit of classroom teachers shall not supplant any of the six (6) hour instructional day.

(4) Professional development activities shall not occur on snow days. Districts may, however, report flexible professional development activities on snow days. This situation involves a calendar change only, and it shall not result in activities on snow days.

(5) Professional development credit shall not be awarded for college graduate courses that lead to a change in rank or certification status. Exceptions may be made for university courses that are clearly supportive of the professional development plan.

(6) Professional development credit shall not be awarded for those activities that provide remuneration beyond travel, food and lodging.

(7) Districts implementing a flexible professional development schedule shall award professional development credit for any given academic school year within the date limitations of the professional development plan.

(8) Appropriate professional development sessions, experiences, and activities shall be those which address instructional improvement for the school district, an individual school or a group of teachers in accordance with the goals of KERA. Activities which are not appropriate for professional development credit include the following: organizational business meetings, compiling class rosters, scheduling, textbook adoption committee meetings, writing lesson plans, housekeeping duties, faculty meetings, extracurricular activities, PTA/PTO meetings, sporting events, field trips, and parent-teacher conferences. Parent-teacher conferencing skill development shall be permissible as professional development.

Section 5. (1) Each superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator for the local district.

(2) The minimum qualifications for the appointment shall be a valid Kentucky certificate as a principal or supervisor.

(3) The duties of the district professional development coordinator shall be [~~are~~] as follows:

(a) Facilitates needs assessments for professional development and the development of goals and objectives for training programs and projects. Beginning in July, 1991, needs assessments and development of goals and objectives shall be carried out in conjunction with the school council or professional development committee of each school.

(b) Provides technical assistance to school councils or professional development committees in the establishment of a school plan for professional development for the local district.

(c) Completes, in conjunction with the consortium, a professional development plan.

(d) Serves as chairperson of district's Professional Development Committee.

(e) Coordinates the planning, implementation and evaluation of the professional development program in conjunction with the school and district professional development committees and the consortium.

(f) Meets regularly with administrators and teachers to establish future goals and identify specific training needs of the district's personnel.

(g) Coordinates the establishment of procedures, timetables, preparation of necessary forms and letters, assignment of workshop sites and all other practical elements of professional development training.

(h) Maintains all professional development records, documentation, and other pertinent records.

(i) Interprets the professional development programs' objectives, results, and needs to school professional development committees, district staff, the board, civic and parent groups, teacher training institutions and others as appropriate.

(j) Keeps updated on current professional development trends.

(k) Maintains continuous liaison with Kentucky Department of Education, the consortium to which the district belongs and other agencies involved with the district in the provision of professional development activities.

Section 6. [~~By the effective date of this regulation,~~] Each local school, district, and consortium shall develop a plan for professional development. This plan shall describe training activities which the school, district, and consortium will provide for its certified staff within the goals of KERA. The consortium plan, along with the plans of its member districts and schools shall be submitted to the Department of Education prior to the implementation of the plans.

Section 7. Additional standards for the school, district, and consortium professional development plans are in the document "Professional Development Planning Process", dated September, 1993, and the addendum dated May 1994, which are [~~is~~] hereby incorporated by reference and may be obtained from the Division of Professional Development, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky, [~~any time between 8 a.m. - 4:30 p.m.,~~] Monday through Friday, 8 a.m. - 4:30 p.m.

Section 8. [~~No~~] More than fifteen (15) percent of each local district's professional development funds shall not be used for

administrative purposes.

Section 9. When implementing professional development programs under KRS 158.070, each local school, district, or consortium of districts shall adhere to its professional development plan as developed with technical assistance as requested from the Department of Education.

Section 10. Any school, district, or consortium not complying with Sections 1 through 9 of this administrative regulation shall be required to personally appear through appropriate representatives before the State Board for Elementary and Secondary Education in order to offer explanation for noncompliance.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: May 13, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Audrey T. Carr
(1) Type and number of entities affected: 176 local districts, 18 professional development consortia.
(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 effect upon competition):
(b) Reporting and paperwork requirements: Does not increase paperwork requirements and in some cases districts and consortia will have less paperwork than in current year.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Does not increase.
(3) Assessment of anticipated effect on state and local revenues: No impact.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not appropriate.
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All districts need to be treated the same to be in compliance with the statute.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Proposed Amendment)

704 KAR 3:292. Chapter 1, ESSIA migrant education requirements.

RELATES TO: KRS [~~156.031,~~] 156.010, 156.035, 156.070
STATUTORY AUTHORITY: KRS [~~156.035,~~] 156.070
NECESSITY AND FUNCTION: In accordance with Section 435 of the General Education Provisions Act and sections 1201, 1202, and 1203 of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary Improvement Amendments of 1988, the Department of Education, when applying to the U.S. Department of Education for participation in programs for migrant children under Chapter 1 of the Education Consolidation and Improvement Act of 1981, must submit an approvable plan and satisfactory assurances that all requirements of the law will be met. This regulation implements the State Board for Elementary and Secondary Education's duties to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper apportionment and disbursement of federal migratory children funds in accordance with the state's current plan. [~~Reconsideration and refiling of this regulation is necessary under KRS 156.031.~~]

Section 1. (1) The Department of Education shall implement services to children by making grants to local school districts which have concentrations of eligible migrant children.
(2) Participating school districts shall submit an annual application for funds to provide services to eligible children.
(3) The application shall be authorized by the local board of education and be approved by the Department of Education.
(4) Participating school districts shall perform an annual assessment of the needs of eligible migrant children.
(5) Participating school districts shall coordinate the migrant program with other federal, state and local programs and agencies as appropriate.

Section 2. (1) Persons coordinating the provision of services for eligible migrant children shall be required to hold certification as a teacher, counselor or social worker.
(2) Summer extended academic services shall be required of all local migrant projects for a duration of four (4) to six (6) weeks and no less than three (3) times per week for eligible students who are the most academically in need.

Section 3. (1) Participating school districts shall involve migrant parents in the education of their children.
(2) Each participating school district shall be required to form a local migrant parent advisory council and to convene the council a minimum of three (3) times per year. [~~Local education agency program applications for federal migratory children funds shall be authorized by the local board of education prior to submission to the Kentucky Department of Education.~~

~~Section 2. (1) The Department of Education, in submitting a three (3) year plan, for fiscal years 1990-1992, shall phase out regular~~

~~school term academic programs for migratory children by the end of year three (3) and phase in substitute summer term programs. The phasing in of a student advocate at the local district level shall be implemented, with such a person to be employed half to full time, year round, and to be responsible for recruitment activities, acting as an advocate for migrant children, and for identifying and coordinating the resolution of problems relating to both home and school.~~

~~(2) Local school districts shall provide services to migrant children, as follows, with all children to receive support services as appropriate:~~

~~Currently Migrant Children (Ages 5-17)~~

~~Year 1 Language Arts regular or summer school~~
~~Advocate part to full time~~
~~Support Funds~~

~~Year 2 Language Arts regular or summer school~~
~~Advocate part to full time~~
~~Support Funds~~

~~Year 3 Language Arts summer school~~
~~Advocate part to full time~~
~~Support Funds~~

~~Currently Migrant Children (Ages 3-4)~~

~~Year 1 Service during regular school year via preschool appropriate materials and home visitation by the advocate. Referral to and service through Headstart. Summer school programs (preparation for kindergarten).~~

~~Year 2 Same~~

~~Year 3 Same~~

~~Currently Migrant Youth (Ages 18-21)~~

~~Student advocate activities in arranging for and referral to GED programs, adult education programs, Kentucky Migrant Farm Workers' Project (DOL 402 Project), JTPA projects, and others as appropriate.~~

~~Formerly Migrant Children (Ages 3-21)~~

~~Similar services, as resources permit.~~

~~(3) All currently migrant children (ages 3-21) regardless of need are first priority. Formerly migrant children shall be served, based upon need, as funds permit.~~

~~(4) Summer school programs shall be a minimum of six (6) weeks in duration.~~

~~Section 3. (1) Annually prior to November 1, local district migrant coordinators (or migrant advocates) shall geographically locate the currently migrant children (ages 3-4), visit the home, and get acquainted with parents. Coordinators shall ascertain current intervention by other educational programs (such as Headstart, PACE, and nursery schools), assess the level of parent educational attainment, and determine the degree of parental cooperation or interest in services. The record of this first visit including demographics, data verification, educational level of parents, current intervention, and degree of interest or cooperation, shall provide baseline data and facilitate preparation for a second home visit.~~

~~(2) Annually during the months of February and March, the LEA migrant student advocate shall then arrange a second home visit to deliver a predeveloped packet and train the parents in suitable developmental activities with a prekindergarten child. A record or log of the visit i.e., date, parent and child, time in training, attitude toward intervention, anticipated progress, concerns or apprehensions shall be kept.~~

~~(3) Annually on or about May 1, the advocate shall next visit the home to assess the value of the packet from the parent's perspective and to enroll the child in the summer school prekindergarten program if locally available.~~

~~(4) If the summer school was not operational in the summer of 1990, the migrant advocate shall bring migrant parents and their prekindergarten children to a central location (school) to share experiences using the training packets and to collect evaluation data on the effectiveness of parent child activity. This gathering shall provide a forum for discussing readiness for kindergarten, the value of schooling, and the importance of parent involvement in the learning process.~~

~~(5) During the second year, the prekindergarten objectives from the first year shall be continued with the revision of training packets and more emphasis on acceleration for economically deprived and educationally disadvantaged children in a six (6) week summer school prekindergarten program, including participation in a federally funded nutrition program.~~

~~(6) During the third year, the prekindergarten objectives from the first year (appropriate referral and parent and child stimulation) shall continue, with all currently migrant children having an opportunity for a summer school prekindergarten acceleration program in 1992.~~

~~Section 4. (1) During the second year of the plan, the Department of Education staff, in cooperation with the LEA projects staff, shall continue the gradual phasing out of the migrant supplemental instruction role in favor of a strong advocacy role of supportive service during the regular school term and the extended instructional program for all migrant students (currently and formerly) via the six (6) week summer school program.~~

~~(2) In the third year of the plan, the Department of Education staff shall realize the full implementation of the advocacy model with new advocates being trained on site by LEA projects staff who have demonstrated ability in getting the best for students from school personnel, the home, and the community. Baseline assessment data shall be established after which exceptions in trend data will alert staff to areas of strength and weakness or neglect. The summer schools shall be monitored for effectiveness in reducing the educational gap, and summer school staff shall be given opportunities for staff development.~~

~~Section 5. (1) The Kentucky Migrant Education program staff shall develop and implement procedures for locating approximately thirty five (35) currently migrant youth, less than twenty two (22) years of age, who have dropped out of school before attaining a high school diploma or its equivalent, and for cultivating an interest and determination to act on a referral to an adult education program, a GED class, a vocational school, or return to the regular secondary school. A log or case study shall document the effort and success of initiatives by migrant advocates.~~

~~(a) Annually before September 1, the LEA migrant coordinators or migrant student advocates shall geographically locate currently migrant dropouts or residency only youth, visit the family, get acquainted with the youth, assess the attitude and interest in further schooling, learn of any current intervention by other agencies, and explore needs. Data gathered shall be recorded as a needs assessment.~~

~~(b) The LEA migrant student advocate shall work individually to secure the participation and completion of the most appropriate alternative educational program for each such youth. The value of the advocates' work shall be measured by youth participation, regular attendance, consistent preparation and application, and successful completion.~~

~~(c) Similar activities with currently migrant youth, ages sixteen (16) to twenty one (21), shall continue during the second and third year of the plan, and the local migrant advocate shall continue to transition such youth to alternative educational programs and even seek to intervene before dropout occurs.~~

~~(2)(a) LEA personnel shall help locate eighteen (18) to twenty one (21) year old current migrant adults who have not attained either high school graduation or a GED. These persons shall be referred to the local adult education agency. These identified adults shall be encouraged to become involved in the local adult education or HEP program.~~

~~(b) Similarly, any eligible eighteen (18) to twenty one (21) year old who is handicapped shall be referred to the local rehabilitation office.~~

~~(c) Sixteen (16) and seventeen (17) year old currently high school dropouts located during recruiting shall be encouraged to return to school. If they choose not to return to school, they shall be referred to adult education and rehabilitation programs, as appropriate.~~

~~Section 6. (1) The Department of Education migrant program evaluator shall guide LEA coordinators in the maintenance of an LEA migrant database that shall be updated annually by May 30. The database shall contain demographic information requested by the federal Secretary of Education, attendance (days present and days absent), achievement status (promoted or retained), migrant funded instructional and supportive services received, other supplemental services, special education services, and achievement performance as measured by the statewide or local assessment instrument.~~

~~(2) The LEA migrant staff, using the migrant database, shall complete a self assessment of the LEA migrant project based on the program application and budget approved by the Department of Education.~~

~~Section 7. Success of the migrant program shall be measured in academic achievement; improved attendance; promotion or graduation; reducing the dropout rate; and the general well being of the student as gathered from interviews with students, teachers and parents.~~

~~Section 8. Each local applicant shall be required to submit an approvable budget. Monthly finance reports denoting expenditures by code(s) (as per the Kentucky School Financial Accounting System Manual) shall be submitted. LEA expenditures for equipment costing $150 or more, and all computer equipment, shall have prior approval from the Department of Education.~~

~~Section 9. (1) Final allocation of federal migrant funds for each LEA shall be based upon the current FTE generated during the preceding calendar year, with such figure to be adjusted due to size, scope, and quality of the proposed project. Other factors determining allocation amounts shall be monitoring results, evaluation data, unused previous year funds, and whether program designs reflect state and local needs assessment results.~~

~~(2) New recruitment projects shall be funded ten (10) to fifteen (15) hours per week at five (5) dollars to seven (7) dollars per hour plus eighteen (18) cents per mile for travel. New projects shall begin as summer projects based upon recruitment results obtained over a minimum recruitment period of not less than six (6) months prior to application for a summer school. Other factors are:~~

~~(a) Results of monitoring of each LEA program if current (last year);~~

~~(b) Evaluation data of year just completed;~~

~~(c) Whether program design is reflective of state and local needs assessment data; and~~

~~(d) Unused funds from the previous year.~~

~~(3) All project applications, regardless of size, shall be given consideration for funding if there are currently migrant children residing in the district. In the event of limited numbers of currently migrant children (less than five (5)), the Department of Education shall first consider funding for those districts where more substantial numbers of currently migrant children reside.~~

~~(4) LEA's shall use teachers who are certified in the grade levels of children with whom they work, but the Department of Education reserves the right to approve the use of teachers who are out of their certification range so long as the majority of students assigned to the teacher are within the certificated grade range. Once LEA's move to summer school academic programs only, teachers shall not be permitted to work with children out of their certificated range.~~

~~(5) Projects shall be designed in consultation with parents and teachers, and written documentation of such consultation is required.~~

~~Section 10. All instructional staff paid with migrant funds shall be required to provide instructional services only upon consultation with and direction from the regular classroom teacher. They shall be required to document consultation and the subject matter content determined by the regular classroom teacher. Handicapped migrant students receive special education services as would any other child. Migrant (academic) services to handicapped migrant children shall only be provided through consultation with special education teachers. Documentation shall be required at the LEA level and checked during monitoring.~~]

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Kenneth Warlick

(1) Type and number of entities affected: All school districts having concentrations of migrant children; presently 70.

(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 effect upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or 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: No
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education
(Proposed Amendment)

780 KAR 1:010. 1995-96 [~~1992-94~~] program plan.

RELATES TO: KRS 151B.025, 151B.100, 151B.150
STATUTORY AUTHORITY: KRS 151B.025, 151B.100, 151B.145
NECESSITY AND FUNCTION: KRS 151B.025 designates the Department for [~~Adult and~~] Technical Education as the sole state agency for developing and approving state plans required by federal law as prerequisites to receiving federal funds for vocational education; 151B.100 authorizes the State Board for Adult and Technical Education to implement any act of Congress appropriating and apportioning funds to states and to provide for the proper disbursement of such funds; 151B.145 accepts and agrees to comply with federal vocational education acts; and KRS 151B.150 gives the state board authority to comply with state and federal vocational education laws. The 1995-96 [~~1992-94~~] Kentucky Program Plan for Vocational Education is necessary in order to be eligible to receive federal funds under PL 101-392, and this regulation formally adopts such plan developed and approved by the Department for [~~Adult and~~] Technical Education.

Section 1. The Kentucky State Board for Adult and Technical Education shall delegate to the Kentucky Department of Education effective July 1, 1990 responsibility for the following duties: coordinating, supervising, and monitoring local plans for secondary vocational education programs in local school districts; evaluating annually a minimum of twenty (20) percent of local school districts with vocational programs; providing statewide leadership in consumer and homemaking education; monitoring research, exemplary, sex equity and displaced homemaker projects awarded to the State Department of Education by the Department for [~~Adult and~~] Technical Education; managing and controlling reimbursement of vocational funds to local school districts; and collecting and reporting vocational data as required by state and federal requirements.

Section 2. Pursuant to the authority vested in the Kentucky State Board for Adult and Technical Education, the 1995-96 [~~1992-94~~] Kentucky Program Plan for Vocational Education is hereby prepared and approved by the State Board for Adult and Technical Education, in accordance with the appropriate federal guidelines, and submitted to the U.S. Secretary of Education for approval. This document, effective July 1, 1994, is incorporated by reference and hereinafter shall be referred to as the [~~1992-94~~] Kentucky Program Plan for Vocational Education, as amended for 1995-96. [~~Copies of~~] The document is available for public inspection and copying at the main office of [~~may be obtained from~~] the Department for [~~Adult and~~] Technical Education, Capital Plaza Tower, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. Monday - Friday.

J. LARRY STINSON, Chairperson
APPROVED BY AGENCY: April 21, 1994
FILED WITH LRC: May 13, 1994 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, June 22, 1994, at 10 a.m. (EST) in Room 306, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 1994, 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: Delmus Murrell, Secretary, State Board for Adult and Technical Education, 302 Capital Plaza Tower, Frankfort, KY 40601, (502) 564-4286.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock
(1) Type and number of entities affected: Eligible recipients include 8 universities, 8 correctional facilities, 14 community colleges, 77 state-operated vocational schools, and 171 local school districts.
(a) Direct and indirect costs or savings to those affected: No indirect cost or savings to eligible recipients. Absence of funds would result in lack of additional services/activities.
(1) First year:
(2) Continuing costs or savings:
(3) Additional factors increasing or decreasing costs: (Note any effects upon competition.)
(b) Reporting and paperwork requirements: Minimal - administrative allowance covers these items.
(2) Effects on the promulgating administrative body: No direct or indirect cost or savings.
(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: Minimal - percentage of funds available for these requirements.
(3) Assessment of anticipated effect on state and local revenues: This plan will enable Kentucky to receive federal funds under PL 101-392.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None - no alternative method available.
(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, rule or regulation in conflict nor overlapping or duplicating of current policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied: Yes. Because of the required formulas and considering initial eligibility of all recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 101-392, Carl D. Perkins Vocational and Applied Technology Act of 1990.

2. State compliance standards. KRS 151B.025, 151B.045, and 151B.050.

3. Minimum or uniform standards contained in the federal mandate. This plan is consistent with requirements in the public law.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:050. Time and manner of payments.

RELATES TO: KRS 205.220(1), 45 CFR 255.3
STATUTORY AUTHORITY: KRS 194.050, 45 CFR 255.3
NECESSITY AND FUNCTION: The Cabinet for Human Resources shall, [has responsibility] under the provisions of KRS Chapter 205, [to] administer the assistance programs of Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS) [money payment programs under Title IV-A and Title IV-F of the Social Security Act] and a state funded program of money payments to those aged, blind and disabled individuals disadvantaged by the implementation of the Supplemental Security Income (SSI) Program. In addition KRS 205.245 provides for money payments to certain other aged, blind or disabled individuals. [Effective July 1, 1990,] The cabinet shall make payments, described in 904 KAR 2:015, for the mentally ill or mentally retarded (MIMR) supplement program. This administrative regulation sets forth the time and the manner in which payments are made.

Section 1. Authorization of AFDC Assistance Payments. (1) Method of payment.

(a) A payment shall be issued monthly by check; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) An AFDC approval shall not be made for any period prior to the date of application.

(b) The effective date of an initial payment for an AFDC approval shall be the date an application is filed if all eligibility factors are met as of that date.

(c) If all eligibility factors are not met as of the day of application, the approval shall be effective the date on which all factors are met.

(3) Subsequent and special payments.

(a) A subsequent AFDC payment shall be made for an entire month in which all technical eligibility factors are met as of the first day of the month.

(b) A subsequent AFDC payment shall not be made to an individual for any month in which the amount of the benefit payment, prior to any recoupment, would be less than ten (10) dollars. Any individual who is denied a payment for this reason shall be deemed a recipient of AFDC for all other purposes.

(c) A special payment shall be issued:

1. When the regular monthly payment received is less than the entitled amount based on the household circumstances; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of payments.

(a) An AFDC payment is unconditional and is exempt from any remedy for the collection of a debt, lien or encumbrance from any individual or agency other than the cabinet.

(b) The cabinet shall initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall usually be issued in the name of the eligible applicant.

(b) A protective payment may be made to a third party payee if:

1. A determination has been made by the agency that poor money management is contributing to the unsuitability of the home for a needy child; or

2. The payee has refused, without good cause as specified in 904 KAR 2:006 and 904 KAR 2:370, to participate in the Job Opportunities and Basic Skills (JOBS) Program or the Child Support Program.

(c) An AFDC payment for the month of death may be reissued to:

1. The widow or widower;

2. The parent;

3. The guardian; or

4. The executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 2. Supportive Services for JOBS Participants. (1) A JOBS supportive services or child care payment shall be made by check and shall be made monthly.

(2) A supportive services payment for a JOBS participant shall be made according to the type of service provided, as follows:

(a) A child care payment shall be issued:

1. On a one (1) month retrospective cycle;

2. Directly to the provider; and

3. Within thirty (30) days of receipt of appropriate verification, as specified in 904 KAR 2:017.

(b) Transportation.

1. A transportation payment shall be made prospectively, not to exceed ninety-three (93) dollars a month, for anticipated transportation costs.

2. A transportation payment shall be made directly to the AFDC recipient.

(c) Other approved supportive services payments shall be made:

1. Directly to the provider; and

2. Within thirty (30) days of receipt of appropriate verification of service delivery of billing, as specified in 904 KAR 2:017.

Section 3. Authorization of a State Supplementation Payment. (1) Method of payment.

(a) A payment shall be issued monthly by check; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) The effective date for State Supplementation Program (SSP) approval shall be the first day of the month in which:

1. An application is filed; and

2. All eligibility factors are met.

(b) A SSP approval shall be made for the entire month during any part of which eligibility factors are met.

(3) Subsequent and special payments.

(a) A SSP payment shall be made for an entire month in which eligibility factors are met as of the first day of the month.

(b) A special payment shall be made:

1. When the regular monthly payment received is less than the entitled amount based on the household circumstances; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of a payment.

(a) A SSP money payment is unconditional and is exempt from any remedy for the collection of a debt, lien or encumbrance from any individual or agency other than the cabinet.

(b) The cabinet may initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall usually be issued in the name of the eligible applicant.

(b) A money payment may be issued to:

1. The legally appointed committee or guardian; or

2. The person serving as the representative payee for another statutory benefit such as SSI.

(c) A SSP payment for the month of death may be reissued to:

1. The widow or widower;

2. The parent;

3. The guardian; or

4. The executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 4. Authorization of a Mentally Ill or Mentally Retarded (MIMR) Supplement Program Payment. (1) Method of payment.

(a) The MIMR supplement payment shall be made:

1. Quarterly;

2. By the last day of the month following the month in which the certified quarter ends.

(b) The training reimbursement payment for the MIMR Supplement Program shall be issued within thirty (30) days of receipt of appropriate documentation, as specified in 904 KAR 2:015.

2. Initial payment.

(a) Following the notification of the cabinet by the personal care home (PCH) of its intent to participate, the effective date of the MIMR supplement shall be the first day of a quarter in which certification requirements contained in 904 KAR 2:015 are met.

(b) MIMR approvals shall be made:

1. For the entire quarter during any part of which certification factors are met, unless a conditional rating is received from the Office of the Inspector General; and

2. If a conditional rating occurs, payment shall be made only for eligible months as specified in 904 KAR 2:015.

(3) Subsequent payments shall be made for any month within a quarter in which eligibility factors are met.

(4) Eligible payee.

(a) Payment for the MIMR supplement shall be made to the participating PCH, meeting MIMR certification requirements, for an eligible calendar quarter, as specified in 904 KAR 2:015.

(b) Payment for the MIMR training reimbursement shall be made to the participating PCH.

~~[Section 1. Manner and Time of Payment. (1) Assistance payments.~~

~~(a) Assistance payments shall be made by check.~~

~~(b) Title IV-A and Title IV-E payments shall be made monthly.~~

~~(c) The MIMR supplement payments shall be made:~~

~~1. Quarterly;~~

~~2. By the last day of the month following the month in which the certified quarter ends.~~

~~(d) The training reimbursement payment for the MIMR supplement program shall be issued within thirty (30) days of receipt of appropriate documentation, as specified in 904 KAR 2:015.~~

~~(2) Effective date of initial payments.~~

~~(a) The effective date of initial payment for Aid to Families with Dependent Children (AFDC) approvals shall be the date an application is filed if all eligibility factors are met as of that date.~~

~~(b) If all eligibility factors are not met as of the day of application, the approval shall be the date on which all factors are met.~~

~~(c) The effective date for State Supplementation Payments (SSP) approvals shall be the first day of the month in which an application is filed if all eligibility factors are met as of that month.~~

~~(d) Following the notification of the cabinet by the PCH of their intent to participate, the effective date of the MI/MR supplement shall be the first day of a quarter in which certification requirements contained in 904 KAR 2:015 are met.~~

~~(3) Initial payments.~~

~~(a) AFDC approvals shall not be made for any period prior to the date of application.~~

~~(b) SSP approvals shall be made for the entire month during any part of which eligibility factors are met.~~

~~(c) MIMR approvals shall be made for the entire quarter during any part of which certification factors are met.~~

~~(4) Subsequent payments.~~

~~(a) SSP payments shall be made for an entire month in which eligibility factors are met as of the first day of the month.~~

~~(b) AFDC payments shall be made for an entire month in which technical eligibility factors are met as of the first day of the month.~~

~~(c) For AFDC, payments shall not be made to an individual for any month in which the amount of the benefit payment, prior to any recoupment, would be less than ten (10) dollars. Any individual who is denied a payment for this reason shall be deemed a recipient of AFDC for all other purposes.~~

~~(d) MIMR payments shall be made for any months within a quarter in which eligibility factors are met.~~

~~(5) Supplemental payments.~~

~~(a) SSP. Supplemental payments shall be made:~~

~~1. If, due to administrative deadlines, changes in circumstances cannot be affected in the month such change occurs; and~~

~~2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.~~

~~(b) AFDC, if changes cannot be affected in the time frames required in retrospective budgeting.~~

~~Section 2. Inalienability of Payment. (1) AFDC and SSP money payments are unconditional and are exempt from any remedy for the collection of debts, liens and encumbrances.~~

~~(2) Exception: the cabinet may initiate recoupment to recover overpayment of benefits.~~

~~Section 3. Eligible Payees. Money payments shall be issued in the name of the eligible applicant, except that:~~

~~(1) In the Aid to Families with Dependent Children Program, a protective payment may be made to a third party payee when:~~

~~(a) A determination has been made that poor money management is contributing to the unsuitability of the home for a needy child; or~~

~~(b) The payee has refused, without good cause, to participate in the Work Incentive Program or the Child Support Program.~~

~~(2) In the State Supplementation Payments Program, the payee may in appropriate circumstances be:~~

~~(a) The legally appointed committee or guardian; or~~

~~(b) For individuals receiving other statutory benefits (such as SSI), the same as the representative payee for that benefit program.~~

~~(3) For AFDC or SSP, payment for the month of death may be made to the:~~

~~(a) Parent or other specified relative of the deceased child; or~~

~~(b) Duly appointed administrator of the estate or qualified executor of the will of the deceased.~~

~~(4) Payment for the MIMR supplement shall be made to the participating PCH, meeting MIMR certification requirements, for an eligible calendar quarter, as specified in 904 KAR 2:015.~~

~~(5) Payment for the MIMR training reimbursement shall be made to the participating PCH.~~

~~(6) Supportive services payments for JOBS participants shall be made according to the type of service provided, as follows:~~

~~(a) Child care payments shall be issued:~~

~~1. On a one (1) month retrospective cycle;~~

~~2. Directly to the provider; and~~

~~3. Within thirty (30) days of receipt of appropriate verification.~~

~~(b) Transportation.~~

~~1. Transportation payments shall be made prospectively, not to exceed twenty-four (24) dollars, for anticipated transportation costs in the initial month of participation.~~

~~2. After verification of actual cost is received in the following month, retrospective payments shall be made for that month and each subsequent month of participation.~~

~~3. Transportation payments shall be made directly to the AFDC recipient.~~

~~(c) Other approved supportive service payments shall be made:~~

~~1. Directly to the provider; and~~

~~2. Within thirty (30) days of receipt of appropriate verification of service delivery and billing.~~

~~(d) All required departmental verification forms are incorporated by reference in 904 KAR 2:016, which fully describes the type and availability of JOBS supportive services.~~]

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: March 24, 1994

FILED WITH LRC: May 9, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 1994 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. 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

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: None. This amendment does not affect current policy. It is a formatting change to bring the regulation into compliance with the requirements of KRS Chapter 13A. The only content change is a reference change from 904 KAR 2:016 to 904 KAR 2:017 in Section 2(3).

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing cost 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 governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal mandates for this proposed amendment. We are only making changes to the formatting to bring the regulation into compliance with KRS Chapter 13A. The only content change is a reference change from 904 KAR 2:016 to 904 KAR 2:017 in Section 2(3).

2. State compliance standards. See Item 1.

3. Minimum or uniform standards contained in the federal mandate. See Item 1.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:025. Technical requirements.

RELATES TO: KRS 194.050, 7 CFR 273.4, 273.5, 273.7, 273.21, 7 USC 2015(e) [~~PL 101-624~~]

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Definitions. (1) "Certification period" means a definite period of time within which a household shall be eligible to receive food stamp benefits.

(2) "Quality control review" means a review of a statistically valid sample of active and denied or discontinued cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that inactive cases are not incorrectly denied or terminated.

(3) "Student status" means any person who is between the ages of eighteen (18) and fifty (50) inclusive, physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with federal regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet utilizes national uniform requirements [~~standards~~] of technical eligibility for the Food Stamp Program.

Section 3. Technical Eligibility Criteria. Technical eligibility requirements [~~standards~~] shall apply equally to all households and consist of:

(1) Residency. A household shall live in the county in which they make application;

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, both the applicant's and the authorized representative's identities shall be verified;

(3) Citizenship and alien status.

(a) Program participation shall be limited to:

1. Citizens of the United States; or

2. Eligible aliens as defined by 904 KAR 3:010.

(b) Individuals whose status is questionable shall be ineligible to participate until such status has been verified;

(c) A single household member shall attest in writing to the citizenship or alien status of each household member;

(d) The departmental form required for the declaration of citizenship or alien status is incorporated into this administrative regulation by reference.

(4) Household size. Size of household shall be verified through readily available documentary evidence or through a collateral contact;

(5) Students. Any person who meets the definition of a student as specified in Section 1 of this administrative regulation shall be ineligible to participate unless they meet at least one (1) of the following criteria:

(a) Shall be engaged in paid employment for a minimum of twenty (20) hours per week or, if self-employed, shall be employed for a minimum of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours; or

(b) Shall participate in a state or federally financed work study program [~~(funded in full or in part under 20 USC 1070)~~] during the regular school year; or

(c) Shall be responsible for the care of a dependent household member under the age of six (6); or

(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6) but is under age twelve (12) where the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) and (b) of this subsection; or

(e) Shall receive benefits from the Aid to Families with Dependent Children Program (AFDC);

(f) Shall be assigned to or placed in an institution of higher learning through a program under:

1. 29 USC 1501;

2. 7 USC 2015; or

3. 19 USC 2296;

(g) Shall be enrolled in an institution of higher learning as a result of participation in a work incentive program under 42 USC 681; or

(h) Is a single parent with responsibility for the care of a dependent household member under age twelve (12).

(6) Mandatory monthly reporting (MMR).

(a) Households of five (5) or more members in which one (1) or more members has gross earned income of $200 or more shall be required to file monthly reports, unless otherwise exempt.

(b) The following households shall be exempt from MMR:

1. Households whose sole source of earnings is from self-employment or contract self-employment income which is annualized for a twelve (12) month period;

2. Migrant or seasonal farm worker households;

3. Households in which all members are homeless individuals; or

4. Households with no earned income in which all adult members are elderly or disabled with no earned income.

(c) Departmental MMR forms are incorporated by reference in this administrative regulation.

(7) Social Security number (SSN).

(a) Households applying for or participating in the Food Stamp Program shall comply with SSN requirements by providing the SSN of each household member or applying for one prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in such individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(8) Work registration. All household members shall be required to comply with the work registration requirements, unless exempt, as described in 904 KAR 3:041, Food Stamp Employment and Training Program.

~~[(a) All household members, except those exempt in paragraph (b) of this subsection, shall be required to:~~

~~1. Register for work;~~

~~2. Accept suitable employment; and~~

~~3. Be subject to other work registration requirements.~~

~~(b) The following persons shall be exempt from work registration requirements:~~

~~1. A person younger than sixteen (16) years of age or a person sixty (60) years of age or older, except:~~

~~a. A child having its 16th birthday within a certification period shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption; or~~

~~b. A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half time basis is exempt;~~

~~2. A person physically or mentally unfit for employment;~~

~~3. A household member subject to and complying with any work requirement in the AFDC Program;~~

~~4. A parent or other household member who is responsible for the care of a dependent child under age six (6) or an incapacitated person;~~

~~5. A person who receives unemployment compensation or a person who has applied for, but has not yet begun to receive, unemployment compensation if that person was required to register for work with the Department for Employment Services as part of the unemployment compensation application process;~~

~~6. A regular participant in a drug addiction or alcoholic treatment and rehabilitation program;~~

~~7. A person who is employed or self employed and:~~

~~a. Working a minimum of thirty (30) hours weekly; or~~

~~b. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;~~

~~8. A migrant or seasonal farm worker who meets the criteria in paragraph (g) of this subsection and is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or~~

~~9. A student enrolled at least half time in any recognized school, training program, or institution of higher education; provided that those meeting student status have met the eligibility conditions in subsection (5) of this section.~~

~~(c) Strikers whose households are eligible in accordance with 904 KAR 3:035, Section 6(9), shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.~~

~~(d) Work registrants who reside in a county which offers a food stamp employment and training program shall be required to participate in the food stamp employment and training program. Participants shall:~~

~~1. Participate in education, job search, or skills training activities; and~~

~~2. Be reimbursed for transportation and dependent care expenses, if otherwise eligible.~~

~~(e) A work registrant who:~~

~~1. Is required to participate in the:~~

~~a. Food stamp employment and training (E&T) program; or~~

~~b. Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS) Program pursuant to 904 KAR 2:006; and~~

~~2. Fails to do so shall be ineligible to receive food stamp benefits for two (2) months unless:~~

~~a. Good cause exists;~~

~~b. The noncompliance individual was participating in a JOBS component which is more stringent that the components of the E&T Program; or~~

~~c. The noncompliant JOBS participant is otherwise exempt from work registration in the E&T Program.~~

~~3. An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in subparagraph 2b of this paragraph shall be work registered in the E&T Program unless otherwise exempt by paragraph (b) of this subsection.~~]

(9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

Section 4. Material Incorporated by Reference. (1) Forms FS-301 and FS-301A are necessary for MMR and are incorporated effective June 1, 1991.

(2) Form FS-106.1 is necessary for the declaration of citizenship or alien status in the Food Stamp Program and is incorporated effective June 1, 1991.

(3) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: March 1, 1994

FILED WITH LRC: May 9, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 1994 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. 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

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: The amendments relating to student eligibility will increase participation among students. However, only a minimal number of individuals will be affected by the policy change. The increased work load will be insignificant and shall not require additional staff. Since the increase in food stamp benefits is 100 percent federally funded, there will be no financial impact to the state agency as a result of implementation of this policy. All other changes to this administrative regulation are for technical drafting purposes, thus, there will be no impact on food stamp recipients or to the state agency.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing cost 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 governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 USC 2015(e), KRS Chapter 13A.

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 relating to student eligibility for participants in a state funded work study program and parents who are responsible for the care of a dependent child who has reached age six, but is under age twelve, where the cabinet has determined that adequate child care is not available are 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 Food and Nutrition Service.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MAY 13, 1994
(Note: May 15, 1994 fell on Sunday; therefore the deadline was the preceding work day)

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:111. Repeal of 12 KAR 1:110.

RELATES TO: 1994 Acts Ch. 370
STATUTORY AUTHORITY: 1994 Acts Ch. 370
NECESSITY AND FUNCTION: Because of enactment of House Bill 733, a new administrative regulation governing the subject matter of this administrative regulation has been filed with the Legislative Research Commission.

Section 1. 12 KAR 1:110, Seed not required to be labeled by variety name, is hereby repealed.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.
PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:111, "Repeal of 12 KAR 1:110", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.
CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT PERSON: Wilbur W. Frye, Director
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky): N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: A new administrative regulation, 12 KAR 1:160, has been filed with the Legislative Research Commission which duplicates the subject matter of 12 KAR 1:110.
(6) Any additional information or comments: N/A
Tiering: Was tiering applied? Tiering was not used as this regulation provides only for the repeal of another regulation.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:115. Sampling, analyzing, testing, and tolerances.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
NECESSITY AND FUNCTION: To prescribe the methods of sampling, analyzing, and testing seed, and to establish the tolerances to be applied in the administration of the Kentucky Seed Law and regulations.

Section 1. The methods of sampling, analyzing, testing and examining seed to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds."

Section 2. The tolerances to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds."

Section 3. Incorporation by Reference. (1) "Rules for Testing Seeds", Vol. 16, No. 3, 1993, Journal of Seed Technology, Association of Official Seed Analysts, is incorporated by reference.
(2) This document may be inspected, copied, or obtained at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: April 27, 1994
FILED WITH LRC: April 28, 1994 at 2 p.m.
PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:115, Sampling, analyzing, testing, and tolerances, shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.
CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, (606)-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director
(1) Type and number of entities affected: All persons who label

or who sell seed in Kentucky are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect monetary costs or savings associated with this regulation. Benefits arise, however, because the rules for testing seeds specify testing procedures necessary for producing fair and reliable test results for samples tested in the Kentucky Agricultural Experiment Station Seed Laboratory.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings to those affected:

1. First year: The enforcement program will benefit because all testing procedures and tolerances applied will be uniform with those used in the enforcement of other state laws and the Federal Seed Act. There is no monetary effect.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation carries with it no reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible substitute for the rules for testing seeds.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. All samples tested receive the same treatment, and the same tolerances apply to all samples.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:120. Noxious weed seed.

RELATES TO: 1994 Acts c. 370

STATUTORY AUTHORITY: 1994 Acts c. 370

NECESSITY AND FUNCTION: To designate the kinds of weed seed to be considered noxious in Kentucky and to establish their maximum permitted rate of occurrence in agricultural seed.

Section 1. Noxious Weed Seed. (1) The following kinds of weed seed are designated noxious in Kentucky and the maximum permitted rate of occurrence per pound of agricultural seed shall be as follows:

Name of Kind	Allowed Per Pound
Balloon vine (Cardiospermum halicacabum)	0
Purple moonflower (Ipomoea turbinata)	0
Canada thistle (Cirsium arvense)	0
Johnsongrass (Sorghum halepense and sorghum almum) and perennial rhizomatous derivatives of these	0
Quackgrass (Agropyron repens)	0
Annual bluegrass (Poa annua)	256
Buckhorn plantain (Plantago lanceolata)	304
Corncockle (Agrostemma githago)	192
Dodder (Cuscuta spp.)	192
Giant foxtail (Setaria faberii)	192
Oxeye daisy (Chrysanthemum leucanthemum)	256
Sorrel (Rumex acetosella)	256
Wild onion and wild garlic (Allium spp.)	96

(2) Other limitations.

(a) Seed which contains in excess of a sum total of 480 noxious weed seed per pound (subject to the above limitations) is prohibited from sale in Kentucky.

(b) There shall be no tolerance applied to prohibited noxious weed seed.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: April 27, 1994

FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:120, "Noxious weed seed", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: All persons who label or who sell seed in Kentucky are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect monetary costs or savings associated with this regulation. The regulation specifies noxious weed seed names and maximum numbers allowed in seed sold in Kentucky. This information is needed by persons who label seed to be sold. Its broader purpose is to reduce the possibility of the spread of noxious weed seed over Kentucky.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky).

(a) Direct and indirect costs or savings to those affected:

1. First year: The enforcement program will benefit because testing procedures and tolerances applied in Kentucky will be uniform with those used in the enforcement of other state laws and the federal seed act. There is no monetary effect.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation carries with it no reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible substitute for the procedure contained in this regulation.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. All samples tested receive the same treatment, and the same tolerances apply to all samples.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:125. Identification of seed not for sale.

RELATES TO: 1994 Acts c. 370

STATUTORY AUTHORITY: 1994 Acts c. 370

NECESSITY AND FUNCTION: To indicate means for identifying seed in storage or in or consigned to a seed cleaning or processing plant, but not offered for sale in locations where some, but not all, seed is for sale. This administrative regulation is needed to facilitate fair and efficient inspection by enforcement officers.

Section 1. The following procedure shall be used if some, but not all, seed in or consigned to a seed cleaning or processing establishment is planned for distribution:

(1) All seed lots shall be maintained separately to prevent the accidental or mechanical mixing of different lots.

(2) All seed not intended for distribution shall be clearly identified with printed signs which indicate the owner or the specific intended use of the seed.

Section 2. All seed intended for distribution shall be plainly identified with a tag on each container, or with a lot number stenciled or taped on each container. If the seed is in a box, frame, crib, wagon, or other enclosed space, that storage space shall be construed to be a container.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: April 27, 1994

FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:125, "Identification of seed not for sale", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, (606)-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: Seed conditioners and seed wholesalers who have in their warehouses or conditioning plants some seed which is for sale and some which is not.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect monetary costs or savings associated with this regulation. The purpose of this regulation is to reduce the need of seed conditioners and seed wholesalers to explain to inspectors the intended use of each separate lot of seed in a warehouse, whether or not it is for sale.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting requirements directly associated with this regulation. However, those persons having some seed for sale and some which is not for sale are required in other portions of the law to keep such records as are necessary to indicate accurately the amounts and kinds of each seed lot which is for sale.

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings:

1. First year: The enforcement program will be aided because inspectors will be able to concentrate efforts on seed being sold. Seed not for sale should not occupy their time or efforts.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation carries with it no reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: We do not believe that there is a better alternative to the procedure that is outlined in this regulation.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. All persons who have some seed for sale and some not for sale are affected in the same way.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:130. Labeling of seed mixtures.

RELATES TO: 1994 Acts c.370

STATUTORY AUTHORITY: 1994 Acts c.370

NECESSITY AND FUNCTION: To prescribe a uniform manner of avoiding contradictory information on printed seed bags and on tags attached to the printed bags in situations where analysis after bagging reveals that a mixture of seed kinds is present rather than a single seed kind.

Section 1. Labeling Tall Fescue and Orchardgrass Seed Mixtures in Printed Bags. (1) Seed of mixtures sold in a bag printed with the words "Kentucky 31 Tall Fescue" on the front (broad) side shall have

a seed tag attached that complies with applicable statutes, and the words "and Orchardgrass Mixture" printed or applied by stencil on the front (broad) side of the bag in lettering that is at least one (1) inch high and located no more than three (3) inches from the "Kentucky 31 Tall Fescue" letters.

(2) Seed in a bag on which "Kentucky 31 Tall Fescue" is printed on the back (broad) side shall have the words "and Orchardgrass Mixture" printed on the back (broad) side of the bag and the words "and Orchardgrass Mixture" printed or applied by stencil on the bag in lettering that is at least one (1) inch high and located no more than three (3) inches from the "Kentucky 31 Tall Fescue" letters.

Section 2. The information on the bag of other kinds of mixtures in printed bags shall be the same as the information on the attached tag. If alteration of a printed bag is necessary to show that the seed is a mixture, the alteration shall be accomplished by use of stencil on the bag in lettering that is at least one (1) inch high and that is located no more than three (3) inches from the original lettering.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: April 27, 1994

FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:130, "Labeling of seed mixtures", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, (606)-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: All persons who label or who sell seed in Kentucky are affected.

(a) Direct and Indirect costs or savings:

1. First year: There are no direct or indirect monetary costs or savings associated with this regulation. It is necessary to establish a procedure for uniform and clear labeling of seed mixtures which are in marked containers.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings:

1. First year: The enforcement program will benefit because time of inspectors will not be required in explaining to the management of each firm distributing seed mixtures the manner in which they are required to meet the requirements of the law. This is a situation in which many violations were being found prior to our circulating instructions for a standardized procedure. There is no monetary effect.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation carries with it no reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: We are not aware of a substitute for the procedure outlined in this regulation which would be as effective as this one.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. All samples tested receive the same treatment, and the same tolerances apply to all samples.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:135. Tags available for purchase from the director.

RELATES TO: 1994 Acts c. 370

STATUTORY AUTHORITY: 1994 Acts c. 370

NECESSITY AND FUNCTION: To prescribe types of seed tags and prices of each different tag type which is available for purchase from the director.

Section 1. Tags may be obtained from the Division of Regulatory Services, College of Agriculture, University of Kentucky. Charges shall be as indicated below:

Form	Kind of Seed	Maximum Bag Weight	Charge (dollars)
A	Alfalfa, clovers and grasses, except mixtures	25 pound	0.08
A	"	50 pound	0.16
A	"	75 pound	0.20
A	"	100 pounds	0.24
B	All other seed except mixtures	25 pound	0.04
B	"	50 pound	0.08
B	"	75 pound	0.12
B	"	100 pounds	0.16
C	Mixtures	25 pound	0.08
C	"	50 pound	0.16
C	"	75 pound	0.20
C	"	100 pounds	0.24

Section 2. If tags are purchased for containers weighing over 100 pounds or for seed in bulk, the number of tags purchased shall be identical to the number which would have been purchased if the seed had been in 100-pound containers.

Section 3. Tags are of two (2) types: unprinted and printed. Unprinted tags are completely blank, whereas printed tags contain the words "Lot," "Seedsman," "Address," "Kind," "Variety," "Pure Seed," "Inert Matter," "Crop Seed," "Weed Seed," "Germination," "Hard Seed," "Date of Test," and "Where Grown" with blank underlined spaces for entry by the tag purchaser of information which applies to the seed being labeled.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: April 27, 1994
FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:135., "Tags available for purchase from the director", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, (606)-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: Labelers of agricultural seed who do no wish to print their own seed tags and Kentucky farmers who purchase agricultural seed

(a) Direct and Indirect costs or savings:

1. First year: Cost of tags is based upon kind and amount of seed in containers being labeled and upon the numbers of tags purchased. Tag sales are made as a service to persons who distribute only small amounts of seed. For these people, purchase of the tags is more convenient than developing a method of printing their own tags. There will be no direct cost to Kentucky farmers who purchase agricultural seed, but some of the cost of tags may be passed on in part to them. Savings will come from assurance that seed being supplied to them is required to meet quality standards, and there is a mechanism in place for removing unacceptable seed from the marketplace.

2. Continuing costs or savings: There will be no change in costs or savings in succeeding years.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings:

1. First year: Income from tag sales is estimated to be $3,000. Costs of processing and mailing tag orders is expected to also be about $3000. No net monetary benefit is expected.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Division of Regulatory Services is required by the law to keep accurate records of all tag sales. Because the number of requests is expected to be low, we are confident that all required steps can be handled by existing staff.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: An alternative would be to require all who label seed to print their own tags or to have the job done by a professional printer and then to pay an inspection fee. At this time, we believe it is best to continue to sell tags.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. Fees are the same for all permit holders.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:140. Permits, reports, and fees for persons using own tags.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
NECESSITY AND FUNCTION: To prescribe procedures to obtain a permit to label and distribute agricultural seed in Kentucky; to pay inspection fees for agricultural seed based upon kind and amount of seed distributed; and to obtain a permit to label and distribute vegetable seed, flower seed, or combination mulch, seed, and fertilizer products in Kentucky.

Section 1. Obtaining Permits. (1) Application for permits to label agricultural seed shall be made on Form RS-64-01c, "Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky."

(2) Application for permits to label vegetable seed, flower seed, or combination mulch, seed and fertilizer products shall be made on Form RS-65-01d, "Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed and Fertilizer Products Sold in Kentucky."

Section 2. Reporting Sales. (1) A person who has been granted a permit to label agricultural seed under the provisions of this subsection shall submit quarterly reports and pay a labeling and inspection fee determined on the basis of quantity of seed sold and on the fee schedule established herein.

(2) Quarters are January through March, April through June, July through September, and October through December. An added assessment of twenty-five (25) dollars or ten (10) percent of the unpaid fee, whichever is greater, shall be made for each seed quarterly report (Form RS-65-02c) received more than forty-five (45) days after the quarter ends.

Section 3. Inspection fee for agricultural seed permit holders shall be:

(1) For packages weighing one (1) pound and up to and including twenty-five (25) pounds:

(a) Alfalfa, clovers, and grasses (including mixtures): eight (8) cents per package.

(b) All other seed: four (4) cents per package.

(2) For packages in excess of twenty-five (25) pounds in weight but not exceeding fifty (50) pounds:

(a) Alfalfa, clovers, and grasses (including mixtures): sixteen (16) cents per package.

(b) All other seed: eight (8) cents per package.

(3) For packages in excess of fifty (50) pounds in weight but not exceeding seventy-five (75) pounds:

(a) Alfalfa, clovers, and grasses (including mixtures): twenty (20) cents per package.

(b) All other seed: twelve (12) cents per package.

(4) For packages in excess of seventy-five (75) pounds in weight but not exceeding 100 pounds:

(a) Alfalfa, clovers, and grasses (including mixtures): twenty- four

(24) cents per package.

(b) All other seed: sixteen (16) cents per package.

(5) For packages in excess of 100 pounds and seed distributed in bulk:

(a) Alfalfa, clovers, and grasses (including mixtures): twenty- four (24) cents per 100 pounds.

(b) All other seed: sixteen (16) cents per 100 pounds.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky" (RS-64-01c).

(b) "Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed and Fertilizer Products" (RS-65-01d); and

(c) "Seed Quarterly Report" (RS-65-02c).

(2) These documents may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275. 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: April 27, 1994

FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:140, "Permits, reports, and fees for persons using own tags", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT PERSON: Wilbur W. Frye, Director

(1) Type and number of entities affected: Agricultural seed permit holders; persons who label vegetable seed, flower seed, or combination mulch, seed, and fertilizer products for distribution in Kentucky; Kentucky farmers who purchase agricultural seed; and persons who purchase vegetable seed, flower seed, or combination mulch, seed, and fertilizer products in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: Cost of a permit for agricultural seed permit holders is $25 per year. The inspection fee these persons pay will depend upon the kinds and amounts of seed they distribute. Persons who label vegetable seed, flower seed, or combination mulch, seed, and fertilizer products for distribution in Kentucky will pay $25 per year for a permit. There will be no inspection fee for these persons. There will be no direct cost to Kentucky farmers who purchase agricultural seed, or to persons who purchase vegetable seed, flower seed, or combination mulch, seed, and fertilizer products in Kentucky. However, labelers' costs of permits and inspection fees may be passed on in part to the purchaser. Benefit will come from assurance that seed being supplied to them is required to meet quality standards, and there is a mechanism in place for removing unacceptable seed from the marketplace.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Agricultural seed permit holders will be required to file reports of kinds and amounts of agricultural seed sold each three months. Persons who label vegetable seed, flower seed, or combination mulch, seed, and fertilizer products for distribution in Kentucky will have no reporting requirements.

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings:

1. First year: Income from agricultural seed permit fees is estimated to be $5,000 (200 permits @ $25); $172,000 from inspection fees from agricultural seed permit holders (an increase of $58,000 over 1993 agricultural seed inspection fees); and $375 (15 @ $25) from permit fees from persons who label vegetable seed, flower seed, or combination mulch, seed, and fertilizer products. Salaries of seed inspectors and seed laboratory personnel and costs of processing permits and quarterly reports are expected to about equal receipts. The enforcement program will be aided because knowledge of the name, address, and phone number of all who label seed in the state will facilitate enforcement of the law in the event that there are violations.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Division of Regulatory Services is required by the law to keep accurate records of all permit transactions and of money received as an inspection fee. All required steps will be handled by existing staff augmented, if necessary, by part-time employees during the time when applications for permits are being received.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods of which we are aware which would be as effective as the procedure specified in the regulation.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. Fees are the same for all permit holders.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:145. Registration of agricultural seed dealers, noncertified custom seed conditioners, certified seed growers, and certified seed conditioners.

RELATES TO: 1994 Acts c. 370

STATUTORY AUTHORITY: 1994 Acts c. 370

NECESSITY AND FUNCTION: To prescribe the procedures whereby agricultural seed dealers, noncertified custom seed conditioners, certified seed growers and certified seed conditioners register with the Division of Regulatory Services.

Section 1. Agricultural seed dealers (persons who distribute agricultural seed in containers of forty (40) pounds or more at retail) shall register using Form RS-65-03a, "Dealer Registration." A twenty-five (25) dollar registration fee shall accompany the submitted application form.

Section 2. Noncertified custom seed conditioners shall register using Form RS-65-03c, "Noncertified Custom Seed Conditioner Registration." A twenty-five (25) dollar registration fee shall accompany the submitted application form.

Section 3. Registration of certified seed growers and certified seed conditioners shall be accomplished by an exchange of records between the Kentucky Seed Improvement Association and the Division of Regulatory Services.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form RS-65-03a, "Agricultural Seed Dealer Registration."

(b) Form RS-65-03c, "Noncertified Custom Seed Conditioner Registration."

(2) These documents may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: April 27, 1994

FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:145, "Registration of agricultural seed dealers, noncertified custom seed conditioners, certified seed growers, and certified seed conditioners", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: Agricultural seed dealers and noncertified custom seed conditioners, certified seed growers and certified seed conditioners, and Kentucky farmers who purchase agricultural seed.

(a) Direct and indirect costs or savings to those affected:

1. First year: Cost of a registration for agricultural seed dealers and noncertified custom seed conditioners will be $25 per year. There will be no cost to certified seed growers or to certified seed conditioners. Kentucky farmers who purchase agricultural seed will derive benefit from assurance that seed being supplied to them is required to meet quality standards, and that there is a mechanism in place for removing unacceptable seed from the marketplace.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Agricultural seed dealers, noncertified custom seed conditioners, certified seed growers and certified seed conditioners must keep records showing buying and selling transactions, but no reports are required.

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings to those affected:

1. First year: Income from registration of agricultural seed dealers is estimated at $3,750 (150 registrations @ $25). Income from registration of uncertified custom seed conditioners is estimated at $625 (25 registrations @ $25). Contribution to salaries of seed inspectors and seed laboratory personnel and costs of processing permit applications are expected to about equal receipts. The enforcement program will be aided because knowledge of the name, address, and phone number of all who distribute and condition seed in the state will facilitate enforcement of the law in the event that there are violations.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Division of Regulatory Services is required by the law to keep accurate records of all permit transactions. All required steps will be handled by existing staff augmented, if necessary, by part-time employees during the time when applications for permits are being received.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods of which we are aware which would be as effective as the procedure specified in the regulation.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. Requirements and fees are the same for all agricultural seed dealers and noncertified seed conditioners.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:150. Stop sale orders.

RELATES TO: 1994 Acts c. 370

STATUTORY AUTHORITY: 1994 Acts c. 370

NECESSITY AND FUNCTION: To provide a means of taking administrative action in the form of a "Stop Sale Order" on seed found by analysis, test, examination, or representation to be in violation of the Kentucky Seed Law.

Section 1. A written or verbal (followed by a written) stop sale order may be issued on any lot of seed found by analysis, test or examination, or upon examination of the label or other graphic or printed representations, or any lot which the director has reasonable cause to believe is in violation of the Kentucky Seed Law and regulations pertaining thereto. Seed under a stop sale order shall not be sold, exposed or offered for sale and shall not be moved from the point where the stop sale order was issued until requirements of the Kentucky Seed Law and regulations have been met and a release

has been issued by the director.

Section 2. Conditions for release shall be:

(1) Correction of the deficiencies for which the stop sale order was issued; and

(2) A request in writing or by phone (followed by written request) by the person to whom the stop sale order was issued.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference: "Notice of violation and stop sale" (RS-30-5c).

(2) This document may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: April 27, 1994

FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:150, "Stop sale orders", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: Agricultural seed dealers and persons who label seed for sale in Kentucky are affected.

(a) Direct and indirect costs or savings to those affected:

1. First Year: There are no direct costs to agricultural seed dealers, but indirect costs may be incurred because of delays in completing sales due to the inability to move the seed until discrepancies are corrected. Persons who labeled seed on which has been issued a stop sale order will need to absorb costs of providing new labels or of replacing seed which is prohibited from sale.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Persons to whom stop sale orders are issued must request release of stop sale orders issued on their property. Persons who labeled seed upon which a stop sale order was issued may be required by the director to provide shipping documents and other documents which establishes the basis for the original labeling.

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings to those affected:

1. First year: The stop sale order is the most effective tool available to the director for effective seed law enforcement. Costs include use of telephone, mail or inspection visits to ensure that deficiencies have been corrected.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Regulatory Services is required to publish periodic reports which show numbers of stop sale orders issued, reasons for the stop sale orders, persons to whom the stop sale orders were issued, and persons who labeled seed upon which a stop sale order was issued.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible substitute for the procedures outlined in this administrative regulation.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. The provisions of the regulation apply equally to all who label and distribute agricultural seed in Kentucky.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:155. Schedule of charges for samples submitted for testing.

RELATES TO: 1994 Acts c. 370

STATUTORY AUTHORITY: 1994 Acts c. 370

NECESSITY AND FUNCTION: To establish a schedule of charges for service tests, analysis, and examination of seed samples in the Kentucky Agricultural Experiment Station Seed Laboratory.

Section 1. The following service charges shall be assessed for samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory:

(1) Basic charge list.

Kind of Seed	Complete Test	Purity and Noxious Weed Test	Germination Only
Alfalfa	$14.00	$ 7.00	$ 8.00
Bentgrass	16.00	12.00	8.00
Bermudagrass	16.00	12.00	8.00
Bluegrass	16.00	12.00	10.00
Bromegrass	16.00	12.00	8.00
Cereals	11.00	5.00	7.00
Clovers	14.00	7.00	8.00
Corn	14.00	7.00	8.00
Crownvetch	14.00	7.00	8.00
Fescue	15.00	8.00	8.00
Lespedeza	14.00	8.00	7.00
Lovegrass	16.00	12.00	8.00
Millet	11.00	5.00	7.00
Orchardgrass	18.00	11.00	8.00
Redtop	16.00	12.00	8.00
Ryegrass	18.00	6.00	8.00
Sorghum-Sudangrass	11.00	5.00	7.00
Soybean	12.00	6.00	7.00
Sudangrass	11.00	5.00	7.00

Timothy	14.00	7.00	8.00
Tobacco	16.00	12.00	8.00
Vegetables	14.00	10.00	7.00
Vetch	11.00	5.00	7.00

(2) Nonresidents will be assessed an additional charge of two (2) dollars per sample. Any Kentucky citizen may submit one (1) seed sample per year for a complete test free of charge provided the sample is accompanied by a signed statement: "I certify that I have not previously submitted a sample for free test during the current calendar year."

(3) A complete test includes a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination test.

(4) Purity and noxious weed includes a purity analysis and a noxious weed seed examination (for only those seed designated as noxious in Kentucky).

(5) In ryegrass samples, a complete test includes a fluorescence test which distinguishes perennial ryegrass seed and annual ryegrass seed.

(6) Mixtures, difficult, or dirty samples may be charged an additional eight (8) dollars per hour for extra separation time. Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.

(7) Rush service may be provided upon request at an additional charge of fifteen (15) dollars per sample.

(8) Schedule of charges for special tests:

(a) Noxious weed seed examination for Kentucky only: eight (8) dollars.

(b) Noxious weed seed examination for any other or for all states: ten (10) dollars.

(c) Moisture test: four (4) dollars.

(d) Seed count per pound: four (4) dollars.

(e) Soybean hypocotyl color test: twelve (12) dollars.

(f) Vigor test (accelerated aging): nine (9) dollars.

(g) Tetrazolium test: twelve (12) dollars.

(h) Phenol test of wheat: twelve (12) dollars.

(i) Peroxidase test of soybeans: twelve (12) dollars.

(j) Seed or plant tall fescue endophyte:

1. One (1) to fifty (50) specimens of same seed lot or uniquely identified group of plants: thirty-five (35) dollars.

2. Fifty-one (51) to 100 specimens of same seed lot or uniquely identified group of plants: sixty (60) dollars.

3. 101 to 150 specimens of same seed lot or uniquely identified group of plants: eighty-five (85) dollars.

(k) Reexamination of a sample to secure information not requested initially, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law may be assessed eight (8) dollars per hour for analytical time.

(9) Charges for kinds not listed above shall be in accord with charges made for other kinds of seed of similar size.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: April 27, 1994

FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:155, "Schedule of charges for samples submitted for testing", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: All persons who label or who submit samples to the Kentucky Agricultural Experiment Station Seed Laboratory are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs of testing depend upon kind of seed and type of test. A fee schedule is part of the regulation.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings to those affected:

1. First year: Amount from service test fees is estimated to total $41,000 per year. This is an increase of $15,000 over 1993 fees for service tests. The amounts charged have been determined in such a manner that the fees cover, but do not exceed, direct cost of materials, mailing, and analyst salaries.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation carries with it no reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible substitute for making a charge for testing samples submitted to the laboratory.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

(7) Tiering: Was tiering applied? There was no tiering applied. All samples tested receive the same treatment, and the same tolerances apply to all samples.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:160. Seed not required to be labeled by variety name.

RELATES TO: 1994 Acts c. 370

STATUTORY AUTHORITY: 1994 Acts c. 370

NECESSITY AND FUNCTION: To designate the kinds of seed for which labeling of variety name is not required. For all other kinds, the variety name is an essential part of the information on the label.

Section 1. The following kinds of seed are omitted from the requirement for labeling to show the variety name and the statement "Variety Unknown":

(1) Bermudagrass (Cynodon dactylon).
(2) Bluegrass, Canada (Poa compressa).
(3) Bluegrass, Rough (Poa trivialis).
(4) Bromegrass, Field (Bromus arvensis).
(5) Buckwheat (Fagopyrum esculentum).
(6) Canarygrass (Phalaris canariensis).
(7) Clover, Alsike (Trifolium hybridum).
(8) Fescue, Chewings (Festuca rubra, var commutata).
(9) Fescue, Meadow (Festuca elatior).
(10) Lespedeza, Korean (Lespedeza stipulacea).
(11) Lespedeza, Striate (Lespedeza striata).
(12) Lovegrass, Sand (Eragrostis trichodes).
(13) Lovegrass, Weeping (Eragrostis curvula).
(14) Millet, Browntop (Panicum ramosum).
(15) Millet, Foxtail (Setaria italica).
(16) Millet, Japanese (Echinochloa crusgalli).
(17) Millet, Proso (Panicum miliaceum).
(18) Rape (Brassica spp.).
(a) Annual (B. napus, var annua).
(b) Turnip, Annual or Bird (B. campestris).
(c) Turnip, Biennial (B. campestris, var autumnalis).
(19) Redtop (Agrostis alba).
(20) Sweetclover, White (Melilotus alba).
(21) Sweetclover, Yellow (Melilotus officinalis).
(22) Vetch, Common (Vicia sativa).
(23) Vetch, Hairy (Vicia villous).

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: April 27, 1994
FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:160, "Seed not required to be labeled by variety name", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: All persons who label or who sell seed in Kentucky are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect monetary costs or savings associated with this regulation. This regulation is required because there are no variety names for some of the kinds of seed sold in Kentucky.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings:

1. First year: The enforcement program will benefit because this regulation makes Kentucky labeling requirements uniform with those used in the enforcement of other state laws and the federal seed act. There is no monetary effect.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation carries with it no reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: We believe that there is no better alternative to the procedure that is outlined in this regulation.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. All samples tested receive the same treatment, and the same tolerances apply to all samples.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:165. Germination standards for vegetable seed.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
NECESSITY AND FUNCTION: To prescribe standards for vegetable seed germination. If germination is equal to or above the standard, only the year for which the seed was packed must be shown. If germination is below the standard, the exact germination percentage must be shown.

Section 1. The following standards for the germination of the kinds of vegetable and herb seed listed below are hereby adopted:

Kind	Percent
Anise	50
Basil, Sweet	70
Caraway	55
Chervil, Salad	65
Coriander	70
Corn, Pop	75
Dill	60
Fennel, Florence	60
Fennel, Sweet	50
Oregano	60
Marjoram, Sweet	50
Peanut	60
Roquette	60
Rosemary	30
Sage	60
Savory, Summer	55
Thyme	50

The germination standard for all other vegetable and herb seed for which standards have not been established shall be fifty (50) percent.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: April 27, 1994
FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:165, "Germination standards for vegetable seed", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: All persons who label vegetable seed for sale in Kentucky are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect monetary costs or savings associated with this regulation. The regulation provides instructions to persons who label vegetable seed for sale in Kentucky.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings to those affected:

1. First year: The enforcement program will benefit because vegetable seed labeling requirements in Kentucky will be uniform with those used in the enforcement of other state laws and the federal seed act. There is no monetary effect.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation carries with it no reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no better alternative to the procedure that is outlined in this regulation.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. All samples tested receive the same treatment, and the same tolerances apply to all samples.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:170. Germination standards for flower seed.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
NECESSITY AND FUNCTION: To prescribe standards for flower seed and to list those kinds for which standard testing procedures are prescribed. The information required to be shown on the label is dependent upon whether or not standard testing procedures have been prescribed and whether or not a lot being labeled falls above or below the standard.

Section 1. Flower Seed Standards. (1) The kinds of flower seed listed below are those for which standard testing procedures have been prescribed. Common names are listed first, followed by Latin names. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, the percentage is the total of percentage germination and percentage hard seed. For other kinds, it is the percentage germination.

Kind	Germination %
Archillea (The Pearl) - Achillea ptarmica	50
African daisy - Dimorphotheca aurantiaca	55
African violet - Saintpaulia spp.	30
Ageratum - Ageratum mexicanum	60
Agrostemma (rose campion) - Agrostemma coronaria	65
Alyssum - Alyssum compactum, A. maritimum, A. procumbens, and A. saxatile	60
Amaranthus - Amaranthus spp.	65
Anagalis (Primpernel) - Anagalis arvensis, A. coerulia, and A. grandiflora	60
Anemone - Anemone coronaria, and A. pulsatilla	55
Angel's trumpet - Datura arborea	60
Arabis - Arabis alpina	60
Arctotis (African lilac daisy) - Arctotis grandis	45
Armeria - Armeria formosa	55
Asparagus, Fern - Asparagus plumosus	50
Asparagus, Sprenger - Asparagus sprengeri	55
Aster, China - Callistephus chinensis; except Pompon, Powderpuff, and Princess types	55
Aster, China - Callistephus chinensis; Pompon, Powderpuff, and Princess types	50
Aubretia - Aubretia deltoides	45
Baby Smilax - Aparagus asparagoides	25
Balsam - Impatiens balsamina	70
Begonia - (Begonia fibrous rooted)	60
Begonia - (Begonia tuberous rooted)	50
Bells of Ireland - Molucella laevis	60
Brachycome (Swan River daisy) - Brachycome iberidifolia	60
Browallia - Browallia elata and B. speciosa	65
Bupthalum (Sunwheel) - Buphthalum salicifolium	60
Calceolaria - Calceolaria spp.	60
Calendula - Calendula officinalis	65
California poppy - Eschscholtzia californica	60
Calliopsis - Coreopsis bicolor, C. drummondi, and C. elegans	65
Campulana	
Canterbury bells - Campanula medium	60
Cup and saucer bellflower - Campanula medium calycanthema	60
Carpathian bellflower - Campanula carpatica	50

Peach bellflower - Campanula persicifolia 50
Candytuft, Annual - Iberis amara, and I. umbellata 65
Candytuft, Perennial - Iberis gibraltarica, and I. sempervirens 55
*Castor bean - Ricinus communis 60
Cathedral bells - Cobaea scandens 65
Celosia - Celosia argentea 65
Centaurea: Basket flower - Centaurea americana, Cornflower - C. cyanus, Dusty miller - C. candidissima, Royal Centaurea - C. imperialis, Sweet sultan - C. moschata, and Velvet Cantaurea - C. gymnocarpa 60
Cerastium (Snow-in-summer) - Cerastium biebersteini and C. tomentosum 65
Chinese forget-me-not - Cynoglossum amabile 55
Chrysanthemum, Annual - Chrysanthmum carinatum, C. coronarium, and C. segetum 40
Cineraria - Senecio cruentus 60
Clarkia - Clarkia elegans 65
Cleome - Cleome gigantea 65
Coleus - Coleus blumei 65
Columbine - Aquilegia spp. 50
Coral bells - Heuchera sanguinea 55
Coreopsis, Perennial - Coreopsis lanceolata 40
Corn, Ornamental - Zea mays 75
Cosmos:
Sensation, Mammoth, and Crested types - Cosmos bipinnatus; and
Klondyke type - C. sulphureau 65
Crossandra - Crossandra infundibuliformis 50
Dahlia - Dahlia spp. 55
Daylily - Hemerocallis spp. 45
Delphinium, Perennial: Belladonna and Bellamosum types;
Cardinal larkspur - Delphinium cardinale;
Chinensis types; and
Pacific giant, Gold medal, and other hybrids of D. elatum 55
Dianthus:
Carnation - Dianthus caryophyllus 60
China pinks - Dianthus chinensis, D. heddewigi, and D. heddensis 70
Grass pinks - Dianthus plumarius 60
Maiden pinks - Dianthus deltiodes 60
Sweet William - Dianthus barbatus 70
Sweet Wivelsfield - Dianthus allwoodi 60
Didiscus (Blue lace flower) - Didiscus coerulea 65
Doronicum (Leopard's bane) - Doronicum caucasicum 60
Dracaena - Dracaena indivisa 55
Dragon tree - Dracaena draco 40
English daisy - Bellis perennis 55
Flax:
Golden flax - Linum flavum,
Flowering flax - L. grandiflorum, and
Perennial flax - L. perenne 60
Flowering maple - Abutilon spp. 35
Foxglove - Digitalis spp. 60
Gaillardia, Annual - Gaillardia pulchella and G. picta 45
Gaillardia, Perennial - G. grandiflora 45
Gerbera (transvaal daisy) - Gerbera Jamesoni 60
Geum - Geum spp. 55
Gilia - Gilia spp. 65
Glosiosa daisy (rudbeckia) - Echinacea purpurea and Rudbeckia hirta 60
Gloxinia - Sinningia speciosa 40
Godetia - Godetia amoena and G. grandiflora 65
Gourds:
Yellow flowered - Cucurbita pepo,
White flowered - Lagenaria sisceraria, and
Dishcloth - Luffa cylindrica 70
Gypsohilia:
Annual baby's breath - Gypsophila elegans; and
Perennial baby's breath - G. paniculata, G. pacifica, and G. repens 70
Helenium - Helenium autumnale 40
Helichrysum - Helichrysum monstrosum 60
Heliopsis - Heliopsis scabra 55
Heliotrope - Heliotropium spp. 35
Helipterum (Acroclinium) - Helipterum roseum 60
Hesperis (Sweet rocket) - Hesperis matronalis 65
*Hollyhock - Althea rosea 65
Hunnemania (Mexican tulip poppy) - Hunnemania fumariaefolia 60
*Hyacinth bean - Dolichos lablab 70
Impatiens - Impatiens holstii and I. sultani 55
*Ipomea:
Cypress vine - Ipomea quamoclit;
Moonflower - I. noctiflora; and
Morning glories, Cardinal climber, Hearts and Honey vine - Ipomea spp. 75
Jurusulem cross (Maltese cross) - Lychnis chalcedonica 70
Job's tears - Coix lacrymajobi 70
Kochia - Kochia childsi 55
Larkspur, Annual - Delphinium ajacis 60
Lantana - Lantana camara, L. hybrida 35
Lilium (Regal lily) - Lilium regale 50
Linaria - Linaria spp. 65
Lobelia, Annual - Lobellia erinus 65
Lunaria, Annual-Lunaria annua 65
*Lupine - Lupinus spp. 65
Marigold - Tagetes spp. 65
Marvel of Peru - Mirabilis jalapa 60
Matricaria (Feverfew) - Matricaria spp. 60
Mignonette - Reseda odorata 55
Myosotis - Myosotis alpestris, M. oblongata, and M. palustris 50
Nasturtium - Tropaeolum spp. 60
Nemesia - Nemesia spp. 65
Nemophila - Nemophila insignis 70
Nemophila, Spotted - Nemophila maculata 60
Nicotiana - Nicotiana affinis, N. sanderae, and N. sylvestris 65
Nierembergia - Nirembergia spp. 55
Nigella - Nigella damascena 55
Pansy - Viola tricolor 60
Penstemon - Penstemon barbatus, P. grandflorus, P. laevigatus, and P. pubescens 60
Petunia - Petunia spp. 45
Phacelia - Phacelia campanularia, P. minor, and P. tanacetifolia 65
Phlox, Annual - Phlox drummondi (all types and varieties) 55
Physalis - Physalis spp. 60
Platycodon (Balloon flower) - Platycodon grandiflorum 60
Plumbago, Cape - Plumbago capensis 50
Ponytail - Beaucarnea recurvata 40
Poppy:
Shirley poppy - Papaver rhoeas,
Iceland poppy - Papaver nudicaule,
Oriental poppy - P. orientale, and

Tulip poppy - P. glaucum	60
Portulace - Portulaca grandiflora	55
Primula (primrose) - Primula spp.	50
Pyrethrum (painted daisy) - Pyrethrum coccineum	60
Salpiglossis - Salpiglossis gloxinaeflora and S. sinuata	60
Salvia:	
Scarlet sage - Salvia splendens, and Mealycup sage (Blue bedder) - Salvia farinacea	50
Saponaria - Saponaria ocymoides and S. vaccaria	60
Scabiosa, Annual - Scaboisa atropurpurea	50
Scabiosa, Perennial - Scaboisa caucasica	40
Schizanthus - Schizanthus spp.	60
*Sensitive plant (mimosa) - Mimosa pudica	65
Shasta daisy - Chrysanthemum maximum and C. leucanthemum	65
Silk oak - Grevillea robusta	25
Snapdragon - Antirrhinum spp.	55
Solanum - Solanum spp.	60
Statice - Statice sinuata and S. suworonii (flower heads)	50
Stocks:	
Common - Mathiola incana and Evening scented - Mathiola bicornis	65
Sunflower - Helianthus spp.	70
Sunrose - Helianthemum spp.	30
*Sweet pea, Annual and Perennial other than dwarf bush - Lathyrus odoratus and L. latifolius	75
*Sweet pea, Dwarf bush - Lathyrus odoratus	65
Tahoka daisy - Machaeanthera tanacetifolia	60
Thunbergia - Thunbergia alata	60
Torch flower - Tithonia speciosa	70
Torenia (Wishbone flower) - Torenia fournieri	70
Tritoma - Kniphofia spp.	65
Verbena, Annual - Verbena hybrida	35
Vinca - Vinca rosea	60
Viola - Viola cornuta	55
Virginian stocks - Malcolmia maritima	65
Wallflower - Cheiranthus allioni	65
Yucca (Adam's needle) - Yucca filamentosa	50
Zinna (except Linearis and Creeping) Zinnia angustifolia, Z. elegans, Z. grandiflora, Z. gracillima, Z. haegeana, Z. multiflora, and Z. pumila	65
Zinnia, Linearis and Creeping - Zinnia linearis and Sanvitaila procumbens	50
All other kinds	50

(2) A mixture of kinds of flower seed will be considered to be below the standard if the germination of any kind or combination of kinds constituting twenty-five (25) percent or more of the mixture by number is below standard for the kind or kinds involved.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: April 27, 1994
FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:170, "Germination standards for flower seed", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: All persons who label flower seed for sale in Kentucky are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect monetary costs or savings associated with this regulation. The regulation provides instructions to persons who label flower seed for sale in Kentucky.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings:

1. First year: The enforcement program will benefit because flower seed labeling requirements in Kentucky will be uniform with those used in the enforcement of other state laws and the federal seed act. There is no monetary effect.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation carries with it no reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but effective enforcement of the seed law assists in maintaining an efficient, effective and profitable seed marketing system in the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: We are aware of no better alternative to the procedure that is outlined in this regulation.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. All samples tested receive the same treatment, and the same tolerances apply to all samples.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:175. Seed certification in Kentucky.

RELATES TO: 1994 Acts c. 370
STATUTORY AUTHORITY: 1994 Acts c. 370
NECESSITY AND FUNCTION: To prescribe the procedure for certifying seed for varietal purity in Kentucky. Certification assures genetic identity and purity of superior plant varieties.

Section 1. Certification Procedure. (1) The procedures and standards established in the Kentucky Certified Seed Handbook shall be applied to all seed certified in Kentucky.

(2) Incorporation by reference.

(a) "Kentucky Seed Certification Standards," Kentucky Seed Improvement Association, P. O. Box 12008, Lexington, KY, June 18, 1994, is incorporated by reference.

(b) This document may be inspected, copied, or obtained at the Division of Regulatory Services, 101 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: April 27, 1994
FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:175, "Seed certification in Kentucky", shall be held on Wednesday, June 22, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Friday, June 17, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: All persons who certify seed in Kentucky are affected by this regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: The seed certification program in Kentucky is optional. There is no cost to those who do not certify seed. Cost of certification depends upon kind and amount of seed being certified. All requirements and fees are described in "Kentucky Certification Standards", which is incorporated by reference into this regulation.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs. None

(b) Reporting and paperwork requirements: This regulation carries with it no reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no direct effects of this regulation on state and local revenues, but there is a general benefit to the state of Kentucky derived from the fact that seed which has been certified for varietal purity and which meets high quality standards is available to its farmers.

(4) Assessment of alternative methods; reasons why alternatives were rejected: We are not aware of any feasible alternative to the procedures contained in this regulation.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? There was no tiering applied. All samples tested receive the same treatment, and the same tolerances apply to all samples.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 6:010. Dealer registration.

RELATES TO: 1994 Acts c. 333
STATUTORY AUTHORITY: 1994 Acts c. 333
NECESSITY AND FUNCTION: To prescribe the procedure for persons who distribute tobacco seedlings or finished tobacco plants to register as dealers, as is mandated in the tobacco seedling law.

Section 1. Registration Form. (1) Application shall be made on Form RS-65-02e, "Tobacco seedling or finished tobacco plant dealer registration form."

(2) A twenty-five (25) dollar registration fee shall accompany the submitted application form.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference: Form RS-65-02e, "Tobacco Seedling and Finished Tobacco Plant Dealer Registration Form."

(2) This document may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: April 27, 1994
FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation, 12 KAR 6:010, "Dealer registration", shall be held on Tuesday, June 21, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Thursday, June 16, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: Tobacco seedling and finished tobacco plant dealers and Kentucky farmers who purchase tobacco seedlings for planting are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: Cost to tobacco seedling and finished tobacco plant dealers will be a $25 per year registration fee. Benefit will come from assurance that seedlings being supplied to them are of a known variety, that the law prohibits suppliers from providing dealers with seedlings which are visibly unhealthy or diseased, and that there is a mechanism in place to eliminate unacceptable seedlings from the

marketplace. Benefits to farmers will come from assurance that seedlings being purchased are of a known variety, that the law prohibits dealers from distributing seedlings which are visibly unhealthy or diseased, and that there is a mechanism in place to eliminate unacceptable seedlings from the marketplace.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Tobacco seedling and finished tobacco plant dealers will be required to keep such records as are necessary to indicate accurately the amounts and kinds of tobacco seedlings or finished tobacco plants distributed during the period the registration is in effect; and shall make the records accessible for examination by the director if necessary.

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings to those affected:

1. First year: Registration fees to be received are estimated to be $3750 (150 dealers @ $25). Costs of processing dealer registrations are expected to be approximately $3500. Hence, costs will about equal receipts. The enforcement program will be aided because dealer registration will assist enforcement officials in knowing where sales of tobacco seedling and finished tobacco plants are being made, and access to records will facilitate enforcement of the law in the event that there are violations.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Regulatory Services is required by the law to keep accurate records of dealer registrations and fees received. All required steps will be handled by existing staff augmented by inspectors who will be hired on temporary appointments for about a three-month period. In accordance with provisions of the law, reports will be prepared to inform the public as to the effectiveness of the program.

(3) Assessment of anticipated effect on state and local revenues: The Kentucky Tobacco Seedling Law is consistent with the goal of maintaining the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring in part because of the rapid change from growing plants in conventional seed beds to producing or purchasing greenhouse float-bed or container seedlings. The Kentucky Seed Law, which previously had made no provision for tobacco seedlings, was changed in 1992 to enable the state to respond to the need. Problems that arose with the seedling provisions of the 1992 Kentucky Seed Law have been corrected in the 1994 Kentucky Tobacco Seedling Law which is a separate law for tobacco seedlings (there are no references to tobacco seedlings in the 1994 Kentucky Seed Law). Failure of the legislature and state regulatory authorities to respond to the quickly changing situation would have had detrimental effects on state and local revenues and the quality of tobacco seedlings available to farmers.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The 1994 tobacco seedling law provides for a regulation describing the procedure to be used in registering tobacco seedling dealers. All requirements are contained in the law.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. Tiering occurs by exempting tobacco seedling or finished tobacco plant growers from the law when the seedlings or plants are sold on a grower's own premises without advertising. Otherwise, the law applies equally to all persons who distribute tobacco seedlings or finished tobacco plants in Kentucky. The exemption is made because farmers, at the time of planting, cannot know exactly the number of seedlings which will be produced or which will be needed in the field. Seeding to produce an excess number of plants is necessary to insure that there will be enough plants to set. The exemption enables a farmer to sell the excess to neighbors without having to register as a dealer or to be subject to labeling requirements.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 6:015. Permit to label tobacco seedlings or finished tobacco plants for distribution in Kentucky, reports of sales, and payment of inspection fees.

RELATES TO: 1994 Acts c. 333

STATUTORY AUTHORITY: 1994 Acts c. 333

NECESSITY AND FUNCTION: To prescribe the procedure for persons to obtain permits to label tobacco seedlings and finished tobacco plants and to report sales and pay inspection fees.

Section 1. Application for Permit. (1) Application shall be made on Form RS-65-02f, "Application for permit to label tobacco seedlings or finished tobacco plants for distribution in Kentucky." A fifty (50) dollar registration fee shall accompany the submitted application form.

(2) Sales shall be reported on "Report of sales of tobacco seedlings and finished tobacco plants." The report and accompanying payment shall be submitted to the director no later than December 1 of the year in which the sales occurred.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form RS-65-02f, "Application for permit to label tobacco seedlings or finished tobacco plants for distribution in Kentucky."

(b) Form RS-65-02d, "Report of sales of tobacco seedling and finished tobacco plants."

(2) These documents may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: April 27, 1994

FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation, 12 KAR 6:015, "Permit to label tobacco seedlings or finished tobacco plants for distribution in Kentucky, reports of sales, and payment of inspection fees", shall be held on Tuesday, June 21, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Thursday, June 16, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: All persons who labels tobacco seedling or finished plants distributed in Kentucky and Kentucky farmers who purchase tobacco seedlings for planting are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: Any person who labels tobacco seedling or finished plants distributed in Kentucky will be required to purchase a permit each year at a cost of $50. In addition, an inspection fee will be assessed according to the numbers of plants sold. The fees are $0.15 per 1000 tobacco seedlings, $0.25 per 1000 finished tobacco plants, and $0.10 per 1000 for finished tobacco plants grown from purchased seedlings for which an inspection fee had been paid prior to purchase. Benefit will come from the knowledge that there is a mechanism in place to take action against those who place unacceptable seedlings from the marketplace. Benefit will come to Kentucky farmers who purchase tobacco seedlings for planting from assurance that seedlings being purchased are of a known variety, that the law prohibits dealers from distributing seedlings which are visibly unhealthy or diseased, and that there is a mechanism in place to eliminate unacceptable seedlings from the marketplace.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All persons who label tobacco seedlings or finished tobacco plants distributed in Kentucky are required to keep such records as are necessary to indicate accurately the amounts and kinds of tobacco seedlings or finished tobacco plants distributed during the period the registration is in effect; to file a report by December 1 of each year indicating the numbers of plants sold, and to make records accessible for examination by the director if necessary.

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings to those affected:

1. First year: Permit fees to be received are estimated at $10,000 (200 permit holders @ $50). Inspection fees received for plants sold are estimated at $20,000 (100 million plants @ an average cost of $0.20 per thousand plants.) Costs, estimated at $30,000 include salary and expenses for three tobacco seedling inspectors hired on a temporary basis for about 3 months and direct costs of processing permit holder applications and reports of sales.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Division of Regulatory Services is required by the law to keep accurate records of permits issued and fees received. All required steps will be handled by existing staff augmented by inspectors who will be hired on a temporary appointments for about a 3-month period. In accordance with provisions of the law, reports will be prepared to inform the public as to the effectiveness of the program.

(3) Assessment of anticipated effect on state and local revenues: The Kentucky Tobacco Seedling Law is consistent with the goal of maintaining the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring in part because of the rapid change from growing plants in conventional seed beds to producing or purchasing greenhouse float-bed or container seedlings. The Kentucky Seed Law, which previously had made no provision for tobacco seedlings, was changed in 1992 to enable the state to respond to the need. Problems that arose with the seedling provisions of the 1992 Kentucky Seed Law have been corrected in the 1994 Kentucky Tobacco Seedling Law which is a separate law for tobacco seedlings (there are no references to tobacco seedlings in the 1994 Kentucky Seed Law). Failure of the legislature and state regulatory authorities to respond to the quickly changing situation would have had detrimental effects on state and local revenues and the quality of tobacco seedlings available to farmers.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The 1994 new seedling law provides for a regulation describing the procedure to be used in issuing permits to label tobacco seedlings and finished tobacco plants and to establish inspection fees. All requirements are contained in the law.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. Tiering occurs by exempting tobacco seedling or finished tobacco plant growers from the law when the seedlings or plants are sold on a grower's own premises without advertising. Otherwise, the law applies equally to all persons who distribute tobacco seedlings or finished tobacco plants in Kentucky. The exemption is made because farmers, at the time of seed planting, cannot know exactly the number of seedlings which will be produced or which will be needed in the field. Seeding to produce an excess number of plants is necessary to insure that there will be enough plants to set. The exemption enables a farmer to sell the excess to neighbors without having to register as a dealer or to be subject to labeling requirements.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 6:020. Identification of tobacco seedlings or finished tobacco plants not for sale.

RELATES TO: 1994 Acts c. 333

STATUTORY AUTHORITY: 1994 Acts c. 333

NECESSITY AND FUNCTION: To describe the manner in which a person shall identify all tobacco seedlings or finished tobacco plants in a warehouse, salesroom, greenhouse, nursery, or other place when some, but not all, of the plants will be distributed. This regulation is needed to facilitate fair and efficient inspection by enforcement officers.

Section 1. The following procedure shall be used if some, but not all, tobacco seedlings or finished tobacco plants in a warehouse, salesroom, greenhouse, nursery, or other place, are to be distributed.

(1) Producers shall maintain separation of all tobacco seedling and finished tobacco plants to prevent the accidental or mechanical mixing of trays of different lots.

(2) All plants not intended for distribution shall be clearly identified with printed signs which indicate the specific use to which the plants will be put.

(3) All tobacco seedlings or finished tobacco plants intended for distribution shall be plainly identified by lot number and the name of the type and variety through use of labels attached to each container or by printed signs for clearly defined groups of containers.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: April 27, 1994

FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation, 12 KAR 6:020, "Identification of tobacco seedlings or finished tobacco plants not for sale", shall be held on Tuesday, June 21, 1994, at 10 a.m. in Room 109, Regulatory Services Building,

University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Thursday, June 16, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: Growers of tobacco seedlings or finished tobacco plants who sell some of the plants they produce and use some for themselves.

(a) Direct and indirect costs or savings to those affected: Growers of tobacco seedlings or finished tobacco plants who sell some of the plants they produce and use some for themselves.

1. First year: There is little if any cost associated with this regulation. Provisions of the regulation are consistent with good management practices. The regulation stipulates that an orderly process be used to indicate the intended use of plants being grown.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Growers of tobacco seedlings or finished tobacco plants who sell some of the plants they produce and use some for themselves are required by the law to keep such records as are necessary to indicate accurately the amounts and kinds of tobacco seedlings or finished tobacco plants distributed during the period the registration is in effect; to file a report by December 1 of each year indicating the numbers of plants sold; and to make records accessible for examination by the director if necessary.

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings to those affected:

1. First year: The enforcement program will be aided because inspectors will be able to concentrate efforts on tobacco seedlings and finished tobacco plants intended for sale. Without clear instructions, some growers would have seedlings arranged such that a great deal of inspector time could be spent determining which were for sale and which were intended for the grower's own use.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Regulatory Services is required by the law to keep accurate records of dealer registrations and fees received. All required steps will be handled by existing staff augmented by inspectors who will be hired on a temporary appointments for about a 3-month period. In accordance with provisions of the law, reports will be prepared to inform the public as to the effectiveness of the program.

(3) Assessment of anticipated effect on state and local revenues: The Kentucky Tobacco Seedling Law is consistent with the goal of maintaining the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring in part because of the rapid change from growing plants in conventional seed beds to producing or purchasing greenhouse float-bed or container seedlings. The Kentucky Seed Law, which previously had made no provision for tobacco seedlings, was changed in 1992 to enable the state to respond to the need. Problems that arose with the seedling provisions of the 1992 Kentucky Seed Law have been corrected in the 1994 Kentucky Tobacco Seedling Law which is a separate law for tobacco seedlings (there are no references to tobacco seedlings in the 1994 Kentucky Seed Law). Failure of the legislature and state regulatory authorities to respond to the quickly changing situation would have had detrimental effects on state and local revenues and the quality of tobacco seedlings available to farmers.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The 1994 Kentucky Tobacco Seedling Law provides for a regulation describing the procedure to be used in registering tobacco seedling dealers. All requirements are contained in the law.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. Tiering occurs by exempting tobacco seedling or finished tobacco plant growers from the law when the seedlings or plants are sold on a grower's own premises without advertising. Otherwise, the law applies equally to all persons who distribute tobacco seedlings or finished tobacco plants in Kentucky. The exemption is made because farmers, at the time of seed planting, cannot know exactly the number of seedlings which will be produced or which will be needed in the field. Seeding to produce an excess number of plants is necessary to insure that there will be enough plants to set. The exemption enables a farmer to sell the excess to neighbors without having to register as a dealer or to be subject to labeling requirements.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 6:025. Notice of violation and stop sale.

RELATES TO: 1994 Acts c. 333

STATUTORY AUTHORITY: 1994 Acts c. 333

NECESSITY AND FUNCTION: To provide for a means of administrative action in the form of a "Stop Sale Order" on tobacco seedlings or finished tobacco plants found upon inspection to be in apparent violation of the Kentucky Tobacco Seedling Law or regulations.

Section 1. A written or verbal (followed by a written) stop sale order may be issued on any lot of tobacco seedlings or finished plants found upon examination to be visibly unhealthy or diseased or to not be labeled in accordance with the Kentucky Tobacco Seedling Law. Written stop sale orders shall be issued by means of Form RS-30-5c, "Notice of violation and stop sale," and release of the stop sale order shall be requested by entry in the appropriate locations of Form RS-30-5c by the person to whom the stop sale order was issued. Verbal release preceding written release may be made by the director.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference: Form RS-30-5c, "Notice of violation and stop sale."

(2) This document may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: April 27, 1994

FILED WITH LRC: April 28, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation, 12 KAR 6:025, "Notice of violation and stop sale", shall be held on Tuesday, June 21, 1994, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Thursday, June 16, 1994, five days before the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may e 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky, 606-257-2785.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilbur W. Frye, Director

(1) Type and number of entities affected: Persons with permits to label tobacco seedlings or finished tobacco plants and Kentucky farmers who purchase tobacco seedlings for planting are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: Persons with permits to label tobacco seedlings or finished tobacco plants will incur costs if there is a need for them to replace unacceptable tobacco seedlings to which a Stop Sale" order has been issued. Benefits will arise from the permit holders not being subjected to bad publicity or litigation costs which could have arisen if farmers had lost money from a crop planted with unacceptable seedlings. Savings will come to Kentucky farmers who purchase tobacco seedlings for planting from assurance that seedlings being supplied to them are of a known variety, that the law prohibits suppliers from providing dealers with seedlings which are visibly unhealthy or diseased, and that there is a mechanism in place to eliminate unacceptable seedlings from the marketplace.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Kentucky seed companies or individuals with permits to label tobacco seedlings are required to keep such records as are necessary to indicate accurately the amounts and kinds of tobacco seedlings or finished tobacco plants distributed during the period the registration is in effect; and shall make the records accessible for examination by the director if necessary.

(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky):

(a) Direct and indirect costs or savings:

1. First year: Registration fees to be received are estimated to be $3750 (150 dealers @ $25). Costs of processing dealer registrations are expected to be approximately $3500. Hence costs will roughly equal receipts. The enforcement program will be aided because dealer registration will assist enforcement officials in knowing where sales of tobacco seedling and finished tobacco plants are being made, and access to records will facilitate enforcement of the law in the event that there are violations.

2. Continuing costs or savings: No change from costs or savings indicated for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Division of Regulatory Services is required by the law to keep accurate records of dealer registrations and fees received. All required steps will be handled by existing staff augmented by inspectors who will be hired on a temporary appointments for about a 3-month period. In accordance with provisions of the law, reports will be prepared to inform the public as to the effectiveness of the program.

(3) Assessment of anticipated effect on state and local revenues: The Kentucky Tobacco Seedling Law is consistent with the goal of maintaining the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring in part because of the rapid change from growing plants in conventional seed beds to producing or purchasing greenhouse float-bed or container seedlings. The Kentucky Seed Law, which previously had made no provision for tobacco seedlings, was changed in 1992 to enable the state to respond to the need. Problems that arose with the seedling provisions of the 1992 Kentucky Seed Law have been corrected in the 1994 Kentucky Tobacco Seedling Law which is a separate law for tobacco seedlings (there are no references to tobacco seedlings in the 1994 Kentucky Seed Law). Failure of the legislature and state regulatory authorities to respond to the quickly changing situation would have had detrimental effects on state and local revenues and the quality of tobacco seedlings available to farmers.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The 1994 Kentucky Tobacco Seedling Law provides for a regulation describing the procedure to be used in registering tobacco seedling dealers. All requirements are contained in the law.

(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: We are not aware of any conflicts or duplications.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. Tiering occurs by exempting tobacco seedling or finished tobacco plant growers from the law when the seedlings or plants are sold on a grower's own premises without advertising. Otherwise, the law applies equally to all persons who distribute tobacco seedlings or finished tobacco plants in Kentucky. The exemption is made because farmers, at the time of seed planting, cannot know exactly the number of seedlings which will be produced or which will be needed in the field. Seeding to produce an excess number of plants is necessary to insure that there will be enough plants to set. The exemption enables a farmer to sell the excess to neighbors without having to register as a dealer or to be subject to labeling requirements.

SECRETARY OF STATE

30 KAR 3:010. Application for registration of trademarks and service marks.

RELATES TO: 1994 Acts Ch. 468

STATUTORY AUTHORITY: 1994 Acts Ch. 468

NECESSITY AND FUNCTION: 1994 Ky. Acts ch. 468 requires the Secretary of State to promulgate an administrative regulation setting forth the manner of applying for registration of trademarks and service marks.

Section 1. Requirements for Application. The application for registration of a trademark or service mark must be on a form prescribed by the Secretary of State. The application for registration of a trademark or service mark must be in English.

Section 2. Requirements for Filing. An application for registration of a mark submitted to the Secretary of State will not be accepted for filing until the application form is completely filled out, the correct filing

fee is tendered and three (3) specimens of the mark are sent.

Section 3. Application Which Includes Multiple Classes. An application may be filed which includes goods or services falling into multiple classes provided that the goods or services are specifically identified, an application fee of ten (10) dollars for each classification is submitted, and the application includes the dates of use and three (3) specimens for each class.

Section 4. Specimens. An application for registration shall include three (3) specimens of the trademark or service mark as used on or in connection with the goods or services. Trademark specimens may be duplicates of the labels, tags or containers bearing the trademark. If the nature of the goods or the nature of the mark makes the use of such specimens impracticable, then the specimen may include documents associated with the goods or services such as stationery, business cards or brochures. Names typed, printed or written on plain paper are not acceptable as specimens of the mark. Specimens must be made of suitable flat material and a size not to exceed eight and one-half (8 1/2) inches wide and eleven (11) inches long.

Section 5. Facsimiles. When, due to the mode of applying or affixing the mark to the goods, or to the manner of using the mark, or to the nature of the mark, specimens cannot be provided, three (3) copies of a photograph or other reproduction showing the mark acceptable to the Secretary of State shall be furnished.

Section 6. Period of Response. The Secretary of State may require the applicant to furnish additional information or make amendments to the application as may be reasonably requested. The Secretary of State shall examine the application and advise the applicant if he is not entitled to registration and the reasons therefor. The applicant shall have thirty (30) days in which to reply or to amend the application, in which event the application shall be reexamined. This procedure may be repeated until the Secretary of State finally refuses registration or the applicant fails to reply or amend the application within the specified period.

Section 7. Classifications. The system of classification of goods and services set out in 30 KAR 3:030 applies for all purposes to trademark and service mark applications filed with the Secretary of State on or after July 15, 1994, and to registrations issued on the basis of such applications. It shall not apply to applications filed on or before July 14, 1994, nor to registrations issued on the basis of such applications. Renewals filed on registrations issued under a prior classification system will be processed on the basis of that system.

BOB BABBAGE, Secretary of State

APPROVED BY AGENCY: May 12, 1994

FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on June 22, 1994, at 10 a.m. at the Secretary of State's Office, the Capitol, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this office in writing by June 17, 1994, 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 comment 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: Mary Sue Helm, Director, Corporation Division, Secretary of State's Office, 700 Capitol Avenue, The Capitol, Suite 150, Frankfort, KY 40601, (502) 564-3490.

REGULATORY IMPACT ANALYSIS

Agency Contact: Mary Sue Helm

(1) Type and number of entities affected: It is impossible to predict the number of applicants for registration of trademarks and service marks. This proposed administrative regulation merely revises an existing application procedure.

(a) Direct and indirect cost or savings to those affected: There is no direct or indirect cost or savings to applicants as a result of this proposed administrative regulation.

1. First year:

2. Continuing cost or savings:

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

(b) Reporting and paperwork requirements: There are no additional reporting requirements to applicants as a result of this proposed administrative regulation. This proposed regulation merely revises an existing application procedure.

(2) Effects on the promulgating administrative body: This regulation is promulgated pursuant to a revision of the existing procedures for applications for registration of trademarks and service marks. Accordingly, this proposed administrative regulation has no effect on the Secretary of State.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There is no effect on the Secretary of State's budget as a result of this administrative regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this proposed administrative regulation is promulgated pursuant to a revision of existing procedures for application for registration of trademarks and service marks.

(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 provision:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering does not apply to this proposed administrative regulation.

SECRETARY OF STATE

30 KAR 3:020. Application for renewal of registration.

RELATES TO: 1994 Acts Ch. 468

STATUTORY AUTHORITY: 1994 Acts Ch. 468

NECESSITY AND FUNCTION: 1994 Ky. Acts Ch. 468 requires the Secretary of State to promulgate an administrative regulation setting forth the manner of renewing registrations of trademarks or service marks.

Section 1. Requirements for Application for Renewal of Registration. The application for renewal of a trademark or service mark registration shall be on a form prescribed by the Secretary of State which shall include a verified statement that the mark has been and is still in use, and include a specimen showing actual use of the mark on or in connection with the goods or services. The application for renewal shall include the required fee for each class for which renewal is sought in the registration and specifically identify the

particular class or classes for which renewal is sought if the registration is for multiple classes of goods or services.

BOB BABBAGE, Secretary of State

APPROVED BY AGENCY: May 12, 1994

FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on June 22, 1994, at 10 a.m. at the Secretary of State's Office, the Capitol, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this office in writing by June 17, 1994, 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 comment 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: Mary Sue Helm, Director, Corporation Division, Secretary of State's Office, 700 Capitol Avenue, The Capitol, Suite 150, Frankfort, KY 40601, (502) 564-3490.

REGULATORY IMPACT ANALYSIS

Agency Contact: Mary Sue Helm

(1) Type and number of entities affected: It is impossible to predict the number of registrants who will renew their trademark or service mark registrations.

(a) Direct and indirect cost or savings to those affected: There will be no direct or indirect cost or savings to applicants who renew their registrations as a result of this proposed administrative regulation.

1. First year:

2. Continuing cost or savings:

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

(b) Reporting and paperwork requirements: There are no additional reporting requirements to applicants as a result of this proposed administrative regulation since this regulation merely revises the existing renewal procedure.

(2) Effects on the promulgating administrative body: This proposed administrative regulation is an amendment to an existing renewal procedure. Accordingly, there will be no effect on the Secretary of State's Office as a result of this proposed 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: There is no anticipated effect on the Secretary of State's budget as a result of this proposed administrative regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this proposed administrative regulation is promulgated pursuant to a revision of an existing renewal procedure.

(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 provision:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering does not apply to this proposed administrative regulation.

SECRETARY OF STATE

30 KAR 3:030. Classification of goods and services for registration of trademarks and service marks.

RELATES TO: 1994 Acts Ch. 468

STATUTORY AUTHORITY: 1994 Acts Ch. 468

NECESSITY AND FUNCTION: 1994 Ky. Acts Ch. 468 requires the Secretary of State to promulgate an administrative regulation establishing a system for classifying goods and services for purposes of application for registration of trademarks and service marks. To the extent practical, the Secretary of State is required to follow the classification of goods and services adopted by the U.S. Patent and Trademark Office.

Section 1. The following classification of goods and services is to be used in the registration of trademarks and service marks.

(1) Goods.

(a) Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

(b) Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

(c) Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

(d) Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

(e) Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

(f) Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; iron-mongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

(g) Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements; incubators for eggs.

(h) Hand tools and implements (hand operated); cutlery; side arms; razors.

(i) Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.

(j) Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.

(k) Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

(l) Vehicles; apparatus for locomotion by land, air or water.

(m) Firearms; ammunition and projectiles; explosives; fireworks.

(n) Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

(o) Musical instruments.

(p) Paper, cardboard and goods made from these materials, not included in other classes; printed matter, bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); playing cards; printers' type; printing blocks.

(q) Rubber, gutta-percha, gum asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

(r) Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

(s) Building materials (nonmetallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.

(t) Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

(u) Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; unworked or semiworked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

(v) Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

(w) Yarns and threads, for textile use.

(x) Textiles and textile goods, not included in other classes; bed and table covers.

(y) Clothing, footwear, headgear.

(z) Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

(aa) Carpets, rugs, mates and matting, linoleum and other materials for covering existing floors; wall hangings (nontextile).

(bb) Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

(cc) Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

(dd) Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, honey, treacle; yeast, baking powder, salt, mustard; vinegar, sauces (condiments); spices; ice.

(ee) Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.

(ff) Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

(gg) Alcoholic beverages (except beers).

(hh) Tobacco; smokers' articles; matches.

(2) Services.

(a) Advertising; business management; business administration; office functions.

(b) Insurance; financial affairs; monetary affairs; real estate affairs.

(c) Building construction; repair; installation services.

(d) Telecommunications.

(e) Transport; packaging and storage of goods; travel arrangement.

(f) Treatment of materials.

(g) Education; providing of training; entertainment; sporting and cultural activities.

(h) Providing of food and drink; temporary accommodation; medical, hygienic and beauty care; veterinary and agricultural services; legal services; scientific and industrial research; computer programming; services that cannot be placed in other classes.

BOB BABBAGE, Secretary of State

APPROVED BY AGENCY: May 12, 1994

FILED WITH LRC: May 13, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on June 22, 1994, at 10 a.m. at the Secretary of State's Office, the Capitol, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this office in writing by June 17, 1994, 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 comment 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: Mary Sue Helm, Director, Corporation Division, Secretary of State's Office, 700 Capitol Avenue, The Capitol, Suite 150, Frankfort, KY 40601, (502) 564-3490.

REGULATORY IMPACT ANALYSIS

Agency Contact: Mary Sue Helm

(1) Type and number of entities affected: It is not possible to estimate the number of applicants for registration of a trademark or service mark.

(a) Direct and indirect cost or savings to those affected: This proposed administrative regulation simply establishes a new classification system for registering a trademark or service mark and therefore there is no direct or indirect cost or savings to applicants.

1. First year:

2. Continuing cost or savings:

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

(b) Reporting and paperwork requirements: Applicants have no additional paperwork requirements as a result of this proposed administrative regulation because this regulation simply adopts a new classification system for registering a trademark or service mark.

(2) Effects on the promulgating administrative body: This proposed administrative regulation has no effect on the Secretary of State's Office since it merely adopts a new classification system which is required by 1994 Ky. Acts Ch. 468.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation has no anticipated effect on the Secretary of State's budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because 1994 Ky. Acts Ch. 468 requires that to the extent possible, the Secretary of State follow the classification adopted by the U.S. Patent and Trademark Office.

(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 provision:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering does not apply to this proposed administrative regulation.

GENERAL GOVERNMENT
State Board of Accountancy

201 KAR 1:081. Firm permits to practice.

RELATES TO: KRS 325.220, 325.380, 1994 Acts Ch. 248, Sec. 1

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: Firm permit to practice, renewal, and procedure for changes.

Section 1. Definitions. (1) A "certified public accountant owner" means a certified public accountant with a current permit to practice issued by a state board of accountancy and may be a shareholder in a professional service corporation or corporation; a partner in a partnership or registered limited liability partnership, or a member of a limited liability company.

(2) "Member" means an individual holding an ownership interest in a limited liability company.

Section 2. A firm seeking to practice public accounting, except a sole proprietorship, shall initially apply for a permit to practice by submitting:

(1) A completed "Initial Firm Registration"; and

(2) A check made payable to the "Kentucky State Board of Accountancy" in the amount of $100 for the initial firm registration fee.

Section 3. (1) A certified public accountant seeking to practice public accounting as a sole proprietor shall register the firm by writing a letter to the board stating the firm office address, phone number, and indicating whether he is practicing public accounting on a full-time or part-time basis; or

(2) If he is establishing the firm within thirty (30) days of his individual permit renewal date, he may submit this information when he renews his individual permit to practice.

(3) No fee shall be assessed for this registration.

Section 4. In May of the firm's renewal year, the board shall send the firm a computer generated notice containing current firm registration information. The firm CPA manager shall renew the firm permit to practice by submitting:

(1) The notice with corrections, deletions, or additions to the filed information; and

(2) A check made payable to the "Kentucky State Board of Accountancy" in the amount of $100 for the firm permit to practice renewal fee.

(3) A sole proprietor shall renew by providing this information when he renews his individual permit to practice. No fee shall be charged for this firm permit to practice renewal.

(4) Failure to receive a notice to renew shall not constitute an adequate excuse for failing to renew the firm permit to practice.

Section 5. If any of the information on the firm permit to practice filing changes, the firm certified public accountant manager shall notify the board by submitting the "Firm Registration Changes".

Section 6. (1) Upon the death or retirement of a firm member which is composed of only two (2) certified public accountant owners, the board shall authorize the continuation of the use of the firm name by the surviving certified public accountant owner for a period of time not to exceed two (2) years from the date of the certified public accountant owner's death or retirement.

(2) The remaining certified public accountant owner shall advise the board in writing of this change within thirty (30) days of its occurrence.

Section 7. The firm name registered with the board shall be the firm name used in all circumstances.

Section 8. (1) The following documents are incorporated by reference:

(a) "Initial Firm Registration (1994)"; and

(b) "Firm Registration Changes (1994)".

(2) These documents may be inspected, copied, or obtained from the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

JOHN N. CRAFT, CPA, President

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 13, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994, 1994, 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 June 16, 1994, 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) 595-3037.

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:

1. First Year: This regulation moves the CPA firm requirements to a separate regulation. No change to firms in permit costs.

2. Continuing costs or savings: No change since 1978.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None exist.

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No effect on agency either positive or negative.

2. Continuing costs or savings: See 1 above.

3. Additional factors increasing or decreasing costs: No factors exist.

(b) Reporting and paperwork requirements: No effect.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the basic firm license requirement specified in KRS Chapter 325.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict or overlap with any other regulation or statute.

(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. Firms consisting of more than one (1) CPA owner pay a fee. Sole proprietors do not complete an additional form or pay an additional fee.

CABINET OF GENERAL GOVERNMENT
State Board of Accountancy

201 KAR 1:096. Repeal of 201 KAR 1:090, 201 KAR 1:095, and 201 KAR 1:080.

RELATES TO: KRS 325.240, 325.300, 325.380, 325.390

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: To repeal regulations which are no longer necessary.

Section 1. 201 KAR 1:090, Practice by nonresidents, is repealed.

Section 2. 201 KAR 1:095, Code of ethics, is repealed.

Section 3. 201 KAR 1:080, Firm registrations, is repealed.

JOHN N. CRAFT, CPA, President

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 13, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994, 1994, 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 June 16, 1994, 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) 595-3037.

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:

1. First Year: There is no cost or savings to CPA firms, since nonresident firm and in-state firm requirements are included in a new regulation with the same costs and paperwork requirements.

2. Continuing costs or savings: See 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no other factors.

(b) Reporting and paperwork requirements: There are no new or additional ones.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Since these repealed regulations are being or have been replaced by new ones, with the same requirements, there is no cost or savings.

2. Continuing costs or savings: See 1 above.

3. Additional factors increasing or decreasing costs: No other factors exist.

(b) Reporting and paperwork requirements: There are no new or additional reporting and paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Since this is a repealer regulation, this question is not appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Since this is a repealer regulation, this question is not appropriate.

(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. A tiering situation does not apply.

GENERAL GOVERNMENT CABINET
State Board of Examiners of Social Work of Kentucky

201 KAR 23:015. Temporary permission to practice.

RELATES TO: KRS 335.080, 335.090, 335.100

STATUTORY AUTHORITY: KRS 335.070(1)

NECESSITY AND FUNCTION: This regulation establishes the requirements for the granting of temporary permission to engage in the practice of social work.

Section 1. (1) A temporary permit to engage in the practice of social work may be granted to an applicant who has completed all of the requirements for licensure except the examination and has applied for licensure under the provisions of KRS Chapter 335.

(2) The temporary permit shall allow the applicant to engage in the practice of social work under the supervision of a person credentialed by the board at the same, or higher licensure level as that applied for by the applicant for the temporary permit.

(3) The request for a temporary permit shall be accompanied by a letter from the proposed supervisor acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.

(4) No licensee may serve as the supervisor for more than two (2) persons holding a temporary permit at any one (1) time.

(5) Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual, face-to-face supervision per week.

(6) The temporary permit shall be valid until the applicant for licensure is issued or denied licensure under the provisions of KRS Chapter 335, but in no instance shall the temporary permit extend for more than sixty (60) days following the second examination offered after the applicant has applied for licensure.

(7) No more than one (1) temporary permit shall be granted for any applicant for licensure.

JACK JOHNSON, Board Chairman

APPROVED BY AGENCY: May 2, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 27, 1994, at 1:30 p.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 June 22, 1994, 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,(502) 564-3296.

REGULATORY IMPACT ANALYSIS
Contact Person: David Nicholas
(1) Type and number of entities affected: All persons approved to sit for the appropriate licensure examination will be eligible for temporary permission to practice.
(a) Direct and indirect costs or savings to those affected:
1. First year: The are no additional costs other than the application fee and the examination fee.
2. Continuing costs or savings: There are no continuing costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The applicant will be required to file a letter from a person licensed at the same level agreeing to provide supervision.
(2) Effects on the promulgating administrative body: This regulation allows the board to grant temporary permission to practice pending passage of the required examination.
(a) Direct and indirect costs or savings:
1 . First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Temporary permission will be granted through a letter.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation will facilitate the beginning of practice for applicants.
(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 applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Registration for Professional Geologists

201 KAR 31:030. Temporary permission to practice.

RELATES TO: KRS 322A.030(3), (4)
STATUTORY AUTHORITY: KRS 322A.030(5)
NECESSITY AND FUNCTION: This regulation establishes the requirements for the granting of temporary permission to engage in the public practice of geology.

Section 1. (1) A temporary permit to engage in the public practice of geology may be granted to an applicant who has completed all of the requirements for registration except the examination and has applied for registration under the provisions of this chapter.
(2) The temporary permit shall allow the applicant to engage in the public practice of geology under the supervision of a person credentialed by the board as a registered geologist.
(3) The request for a temporary permit shall be accompanied by a letter from the supervising registered geologist acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.
(4) No registered geologist may serve as the supervisor of record for more than two (2) persons holding a temporary permit at any one (1) time.
(5) Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual, face-to-face supervision per week.
(6) The temporary permit shall be valid until the applicant for registration is issued or denied registration under the provisions of KRS Chapter 322A, but in no instance shall the temporary permit extend for more than sixty (60) days following the second examination offered after the applicant has applied for registration.
(7) No more than one (1) temporary permit shall be granted for any applicant for registration.

JOHN C. PHILLEY, Ph.D., Board Chairman
APPROVED BY AGENCY: April 21, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 27, 1994, at 9:30 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 June 22, 1994, 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, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas
(1) Type and number of entities affected: All persons approved to sit for the registration examination will be eligible for temporary permission to practice.
(a) Direct and indirect costs or savings to those affected:
1. First year: The are no additional costs other than the application fee and the examination fee.
2. Continuing costs or savings: There are no continuing costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The applicant will be required to file a letter from a registered geologist agreeing to provide supervision.
(2) Effects on the promulgating administrative body: This regulation allows the board to grant temporary permission to practice pending passage of the required examination.
(a) Direct and indirect costs or savings:
1 . First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Temporary permission will be granted through a letter.
(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation will facilitate the beginning of practice for applicants.

(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 applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Registration for Professional Geologists

201 KAR 31:040. Examinations.

RELATES TO: KRS 322A.030(3), (4), 322A.040(1)(c)

STATUTORY AUTHORITY: KRS 322A.030(5)

NECESSITY AND FUNCTION: KRS 322A.040(1)(c) requires administrative regulations governing the examination of applicants for registration. This administrative regulation outlines requirements concerning examinations.

Section 1. General Requirements. (1) The board shall furnish to applicants pertinent instructions and establish the examination schedule which shall include: the place, the time, and the final date by which the board shall have received the applicant's materials.

(2) An applicant for examination shall submit a complete application and pay the required application and examination fees to the board in a timely manner. Once the application has been approved by the board, the applicant shall 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 forfeit all examination 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 be terminated on the date of the examination, and the applicant shall be denied registration on the basis of failure of the examination by default. The applicant may not engage in the public practice of geology or use the title "registered geologist".

Section 2. Examination for Registration. (1) An applicant for licensure shall submit to an examination composed of the fundamentals in geology (FG) and the principles and practice of geology (PPG) developed and owned by the Association of State Boards of Geology (ASBOG). The applicant shall obtain a score equal to passage of seventy (70) percent of the test items on each portion of the examination.

(2) An applicant for registration who has been approved to sit for the examination and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary permit until all requirements for registration have been completed.

(3) If an applicant for registration fails one (1) or both portions of the examination, the applicant may, with payment of the required fee, be rescheduled to take the examination at its next regularly scheduled date. An applicant who fails one (1) portion of the examination shall be required to retake only the portion on which they failed to achieve a passing score.

(4) If the applicant is practicing under a temporary permit, the applicant may continue to practice under the supervision of a registered geologist until achieving a passing score on the examination or until sixty (60) days after the second examination offered after the applicant has been approved for registration.

JOHN C. PHILLEY, Ph.D., Board Chairman

APPROVED BY AGENCY: April 21, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 27, 1994, at 9:30 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 June 22, 1994, 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, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All persons approved for registration must sit for the registration examination.

(a) Direct and indirect costs or savings to those affected: Applicants will pay the same amount for examination as it costs the board.

1. First year: The are no additional costs other than the application fee and the examination fee.

2. Continuing costs or savings: There are no continuing costs.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The applicant will be required to fill out an application.

(2) Effects on the promulgating administrative body: This regulation sets the requirements for examination.

(a) Direct and indirect costs or savings:

1 . First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Examinations will be administered by staff and scored by exam service.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is required to continue the licensure process.

(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 applicants will be subject to this regulation in the same ways.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 3:025. License distribution and reporting.

RELATES TO: KRS 150.010, 150.150, 150.170, 150.175, 150.190, 150.225, 150.603, 150.990, 1994 Acts c. 239

STATUTORY AUTHORITY: 13A.350, 1994 Acts c. 239

NECESSITY AND FUNCTION: The function of this regulation is to continue the present system of license distribution and reporting until the system authorized by 1994 Ky. Acts ch. 239, is implemented. It is necessary because 1994 Ky. Acts ch. 239, Sec. 1, specifies that license fees, distribution and reporting requirements formerly contained in KRS 150.200, 150.210, 150.230 and 64.012 be promulgated by administrative regulation.

Section 1. Fees Retained by County Clerks. (1) County clerks shall retain a fee of twenty-five (25) cents for each waterfowl permit sold.

(2) County clerks shall retain a fee of seventy-five (75) cents each for all other department licenses and permits sold.

Section 2. Reporting Requirements. (1) After deducting the fees specified in Section 1 of this administrative regulation, county clerks shall, on or before the tenth day of each month, remit to the State Treasurer for deposit into the Fish and Game Fund the remainder of license and permit fees collected during the preceding month.

(2) County clerks shall report to the department on or before the tenth day of each month the number and kind of licenses and permits sold and the amount of money remitted to the state treasurer.

(3) County clerks shall report to the department on or before twenty-five (25) days after the close of the license year the number and kind of licenses and permits issued and the amount of money remitted to the State Treasurer during the preceding license year.

(4) County clerks shall make monthly and annual reports on forms provided by the department.

Section 3. Licenses and Permits Sold by County Clerks or the Department. (1) County clerks shall sell the following licenses and permits: combination hunting and fishing license, statewide resident hunting license; nonresident annual hunting license; five (5) day nonresident hunting license; junior statewide hunting license; statewide resident sport fishing license; joint statewide resident sport fishing license; nonresident sport fishing license; three (3) day nonresident fishing license; fifteen (15) day nonresident fishing license; big game permit, deer; junior big game permit, deer; big game permit, turkey; trout permit; and waterfowl permit.

(2) The department may sell the licenses and permits listed in subsection (1) of this section at its Frankfort office and at selected field offices across the state.

(3) The department shall sell all remaining licenses and permits only from its Frankfort office.

Section 4. Waterfowl and Trout Permits. (1) Persons purchasing waterfowl or trout permits for hunting or fishing shall affix the permit to the appropriate license and sign the permit across its face in ink.

(2) Persons purchasing waterfowl or trout permits for collecting purposes are not required to affix or sign the permit.

Section 5. Appointment of Agents for the Sale of Licenses. (1) Within thirty (30) days after the effective date of this regulation, county clerks shall submit to the department the names, addresses and telephone numbers of their license agents as of July 16, 1994.

(2) County clerks shall, as a part of their monthly report, submit to the department any additions to or deletions from their lists of agents.

(3) The department shall appoint as agents for the sale of licenses those persons on the lists submitted by county clerks.

(4) The department shall issue licenses and permits to county clerks for distribution to authorized agents.

(5) County clerks shall be financially responsible for all licenses and permits issued to them, whether retained or distributed to agents.

Section 6. Items Incorporated by Reference. (1) The following forms are incorporated by reference:

(a) Department of Fish and Wildlife Final Settlement form.

(b) Monthly Report of County Clerk form.

(2) These forms are available for inspection or copying from the Division of Fiscal Control, Department of Fish and Wildlife, #1 Game Farm Road, Frankfort, KY 40601 during regular business hours.

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: March 7, 1994

FILED WITH LRC: May 12, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 28, 1994, at 11 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, KY. Individuals interested in attending this hearing shall notify this agency in writing by June 23, 1994, 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. C. Thomas Bennett, Commissioner, 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: C. Thomas Bennett

(1) Type and number of entities affected: 120 county clerks, and approximately 1,500 license agents authorized by these clerks to sell hunting and fishing licenses.

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs or savings are anticipated.

2. Continuing costs or savings: No additional costs or savings are anticipated.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements are imposed; this regulation maintains the current system of reporting.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs and savings:

1. First year: No additional costs or savings are anticipated.

2. Continuing costs or savings: No continuing costs or savings are anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No changes in current paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This regulation maintains the current clerk's fee for each license sold. It should neither increase nor decrease either state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of having no legal requirement for county clerks to report license sales and account for unsold licenses

would leave the department without a means of accounting for its licenses.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This administrative regulation replaces provisions of KRS Chapter 150 repealed in the 1994 session of the General Assembly by 1994 Kentucky Acts Chapter 239. This bill requires the department to establish by administrative regulation fees and reporting requirements for those selling hunting and fishing licenses. This administrative regulation will maintain the present system while the department develops the licensing system authorized by 1994 Kentucky Acts Chapter 239.

TIERING: Was tiering applied? No. Tiering was not applied because fees, reporting and accounting standards are the same for all county clerks.

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 those sections of county clerks' offices that sell hunting or fishing licenses.

3. State the aspect or service of local government to which this administrative regulation relates. County clerks are authorized to sell hunting and fishing licenses, and to choose license agents in the county to sell these licenses. Clerks retain a fee from each license sold. This regulation makes no changes in this system or in the amount of the clerk's fee.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation, since it makes no changes in the present system, will have no impact on local governments or their services.

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

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.

RELATES TO: KRS 224.01-010, 224.01-110, 224.10-100, 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 33 USC 1288, 1314(b), 1342, 40 CFR Parts 116, 136, 401-471

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 33 USC 1288, 1314(b), 1342, 40 CFR Parts 116, 136, 401-471

NECESSITY AND FUNCTION: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. This chapter establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This administrative regulation establishes definitions for terms and acronyms, abbreviations, and symbols used in 401 KAR Chapter 5, relating to the issuance of those permits.

Section 1. Definitions. The definitions established in this administrative regulation govern the subject matter of this chapter. Terms not defined in this administrative regulation shall have the meanings given them by KRS 224.01-010.

(1) "Act" means the Federal Water Pollution Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

(2) "Activity" means, for purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with facility, any KPDES point source, or any other activity, including land or appurtenances thereto, that is subject to regulation under the KPDES program.

(3) "Administrator" means the administrator of the United States Environmental Protection Agency, or the administrator's authorized representative.

(4) "Agricultural wastes handling system" means a no-discharge structure or equipment that conveys, stores, or treats manure from a concentrated animal feeding operation prior to land application.

(5) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under 401 KAR 5:055.

(6) "Animal feeding operation" means, for purposes of 401 KAR 5:050 to 5:080, a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(a)1. Animals other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(7) "Animal unit" means, for purposes of 401 KAR 5:050 to 5:080, the unit of measurement for any animal feeding operation, calculated according to the following equation:

$$\text{Animal Unit} = (N_1 \times 1.0) + (N_2 \times 1.4) + (N_3 \times 0.4) + (N_4 \times 0.1) + (N_5 \times 2.0)$$

Where:

N_1 = Number of slaughter and feeder cattle;
N_2 = Number of mature dairy cattle;
N_3 = Number of swine weighing over twenty-five (25) kg;
N_4 = Number of sheep; and
N_5 = Number of horses.

(8) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject under KRS Chapter 224, and administrative regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, and toxic effluent standards.

(9) "Application" means the document submitted by an applicant to the cabinet which provides information used by the cabinet in the issuance of a permit or approval. The application may have several different forms, depending on the type of permit which is requested. The specific forms are required in the applicable administrative regulation.

(10) "Approved POTW pretreatment program", "POTW pretreatment program", "pretreatment program", or "program" means a program administered by a POTW that meets the criteria established in 401 KAR 5:057 and which has been approved by the cabinet.

(11) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(12) "Area of review" means a fixed radius around a facility of not less than one-fourth (1/4) mile.

(13) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.

(14) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.

(15) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.

(16) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(17) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(18) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. Such a community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence of abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(19) "Barrel" means forty-two (42) U.S. gallons.

(20) "BAT" means best available technology economically achievable.

(21) "BCT" means best conventional pollutant control technology.

(22) "Best management practices" or "BMPs" means, for purposes other than agriculture operations, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(23) "Biochemical oxygen demand", "BOD", or "BOD_5" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(24) "BMPs" means best management practices.

(25) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(26) "BOD" or "BOD_5" means biochemical oxygen demand.

(27) "BPT" means best practicable technology currently available.

(28) "Bypass" means the intentional diversion of sewage or waste streams from a portion of a facility or industrial user's treatment facility.

(29) "°C" means degrees Celsius.

(30) "CAH" means cold water aquatic habitat.

(31) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(32) "CBOD" means carbonaceous biochemical oxygen demand.

(33) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 USC 9601 et seq.).

(34) "Certificate" means the certificate of competency issued by the secretary or the secretary's designated agent stating that the operator has met the requirements for the specified operator classification as set by 401 KAR 5:010.

(35) "Certified operator" means a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of 401 KAR 5:010.

(36) "cfm" means cubic feet per minute.

(37) "CFR" means Code of Federal Regulations.

(38) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended (33 USC Section 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.

(39) "Coal remining operation" means a surface coal mining operation which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977. It also means a surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before August 3, 1977.

(40) "COD" means chemical oxygen demand.

(41) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(42) "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water run-off as well as sanitary wastewater.

(43) "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(44) "Composite sample" means:

(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow:

(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow:

(c) An effluent portion collected continuously over a period of twenty-four (24) hours at a rate proportional to the flow; or

(d) An effluent portion consisting of a minimum of four (4) combined equal volume grab samples taken approximately two (2) hours apart.

(45) "Concentrated animal feeding operation" means, for purposes of 401 KAR 5:050 to 5:080, an animal feeding operation where:

(a) More than the following numbers of indicated animals are confined:

1. 1,000 slaughter and feeder cattle;

2. 700 mature dairy cattle, whether milked or dry cows;

3. 2,500 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);

4. 500 horses;

5. 10,000 sheep or lambs;

6. 55,000 turkeys;

7. 100,000 laying hens or broilers if the facility has continuous overflow watering;

8. 30,000 laying hens or broilers if the facility has a liquid manure system;

9. 5,000 ducks; or

10. 1,000 animal units; or

(b)1. More than the following number and types of animals are confined:

a. 300 slaughter or feeder cattle;

b. 200 mature dairy cattle, whether milked or dry cows;

c. 750 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,500 turkeys;

g. 30,000 laying hens or broilers if the facility has continuous overflow watering;

h. 9,000 laying hens or broilers if the facility has a liquid manure system;

i. 1,500 ducks; or

j. 300 animal units; and

2. Either pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the Commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(c) If an animal feeding operation discharges only during a twenty-five (25) year, twenty-four (24) hour storm event or greater, the animal feeding operation shall not be considered to be a concentrated animal feeding operation.

(46) "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in 401 KAR 5:060 or which the cabinet designates under 401 KAR 5:060.

(47) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(48) "Control authority" means the POTW if the POTW has an approved pretreatment program or the cabinet if the POTW does not have an approved pretreatment program.

(49) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(50) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(51) "Copermittee" means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the discharge for which it is the operator.

(52) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(53) "CSO" means combined sewer overflow.

(54) "CWA" means the Clean Water Act, as amended.

(55) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(56) "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program under CWA Section 402 (33 USC Section 1342).

(57) "Day" means a twenty-four (24) hour period.

(58) "Designated project area" means the portions of the waters of the Commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

(59) "Direct discharge" means the discharge of a pollutant into waters of the Commonwealth if the discharge is not included under the definition of indirect discharger.

(60) "Discharge" or "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any point source. This definition includes, but is not limited to, additions of pollutants into waters of the Commonwealth from surface run-off which is collected or channelled by human effort; discharges through pipes, sewers or other conveyances whether publicly or privately owned which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

(61) "Discharge monitoring report" or "DMR" means the report including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by KPDES permittees.

(62) "Disposal well" means a borehole drilled or proposed to be drilled, or a well converted to be used, for the sole purpose of disposing of any water, gas, produced water, or other fluid by injection or other method into a subsurface zone.

(63) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet.

(64) "DMR" means discharge monitoring report.

(65) "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(66) "Domestic sewage" means sewage devoid of industrial or other wastes and which is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(67) "Domestic water supply" or "DWS" means surface waters that with conventional treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in any food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 USC 300f - 300j.

(68) "Draft permit" means a document prepared under 401 KAR 5:075 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue, revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent to deny a permit as provided in 401 KAR 5:075. It does not include a proposed permit; a denial of a request for modification, renovation, and reissuance; or a denial of a request for revocation.

(69) "Drilling pit" means an earthen excavation for the collection of fluids associated with the drilling, construction, completion, acidizing, or fracturing of an oil or gas well.

(70) "Dry gas well" means a gas well producing one (1) barrel or less of produced water at maximum production conditions during a given twenty-four (24) hour period.

(71) "DWS" means domestic water supply.

(72) "Effluent ditch" means that portion of a treatment system which is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger, which transports a discharge to surface waters of the Commonwealth.

(73) "Effluent lagoon" means a treatment lagoon.

(74) "Effluent limitation" means any restriction imposed by the cabinet on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the Commonwealth.

(75) "Effluent limitations guideline" means a federal regulation

published by the administrator under CWA Section 304(b) (33 USC Section 1314(b)) to adopt or revise technology-based effluent limitations.

(76) "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.

(77) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(78) "EPA" means the United States Environmental Protection Agency.

(79) "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.

(80) "°F" means degrees Fahrenheit.

(81) "Facility" means:

(a) For purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with activity, any KPDES point source, or any other facility, including land or appurtenances thereto, that is subject to regulation under the KPDES program; or

(b) For purposes of 401 KAR 5:090, any well, tank, pit, structure, appurtenance or improvement used in the exploration, drilling, or production of oil or gas or used for treating, storing, or disposing of produced water.

(82) "Facilities or equipment" means buildings, structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(83) "Fecal coliform" means the portion of the coliform group of bacteria which are present in the intestinal tract or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C.

(84) "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

(85) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(86) "Geologically isolated" means a zone separated from drinking water aquifers and free of known open faults or fractures and free of any unprotected wells within the area of review.

(87) "GPD" means gallons per day.

(88) "Grab sample" means:

(a) For purposes of 401 KAR 5:045, a single instantaneous portion of the effluent; or

(b) For purposes of 401 KAR 5:050 to 5:080, a single effluent portion which is not a twenty-four (24) hour composite sample.

(89) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(90) "Hazardous substance" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant designated under 40 CFR Part 116.

(91) "Holding pit" means an earthen excavated depression which receives and stores produced water at a facility.

(92) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a KPDES permit, other than the KPDES permit for discharges from the municipal separate storm sewer, and discharges resulting from fire fighting activities.

(93) "Inactive mining operations" means mining sites that are not being actively mined, but which have an identifiable owner or operator. Inactive mining operations do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(94) "Incorporated place" means a city, town, township, or village that is created under the Kentucky Revised Statutes.

(95) "Indirect discharge" or "discharge" means, for purposes of 401 KAR 5:057, the introduction of pollutants into a POTW from a nondomestic industrial source regulated by the program.

(96) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(97) "Industrial user" or "user" means a source of indirect discharge.

(98) "Interference" means a discharge which, alone or in conjunction with discharges from other sources:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and

(b) Therefore, is a cause of a violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and administrative regulations or permits issued thereunder or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended, the Solid Waste Disposal Act as amended (SWDA), including RCRA, and including any administrative regulations contained in a sludge management plan prepared pursuant to Subtitle D of the SWDA as amended, the Clean Air Act as amended, and the Toxic Substances Control Act as amended.

(99) "Intermediate facility" means a WWTP with an average daily design capacity of 10,000 to 49,999 gallons per day (GPD) or sewer lines of 2,500 feet to 5,000 feet in length including appurtenances.

(100) "Intermediate nonpublicly owned treatment works" means a facility which has a design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(101) "Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator under the CWA or KRS Chapter 224.

(102) "KAR" means Kentucky administrative regulations.

(103) "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements. The KPDES administrative regulations are 401 KAR 5:050 to 5:080.

(104) "kg" means kilograms.

(105) "KPDES" means the Kentucky Pollutant Discharge Elimination System.

(106) "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(107) "KRS" means Kentucky revised statutes.

(108) "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or sewer lines of more than 5,000 feet in length including appurtenances.

(109) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the latest census of the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet may, upon petition, designate as a large municipal separate storm sewer system, those municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(110) "Large nonpublicly owned treatment works" means a facility which has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(111) "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to 5:080, facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

(112) "Major facility" means any KPDES facility or activity classified as such by the cabinet in cooperation with the regional administrator. Designation as a major industry as used in KRS 224.70-120, does not indicate automatic classification as a major facility.

(113) "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criteria for classification as a major facility.

(114) "Major municipal separate storm sewer outfall" or "major outfall" means:

(a) A municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of thirty-six (36) inches or more or its equivalent of a discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than fifty (50) acres; or

(b) For municipal separate storm sewers that receive storm water from lands zoned for industrial activity based on comprehensive zoning plans or the equivalent, an outfall that discharges from a single pipe with an inside diameter of twelve (12) inches or more or from its equivalent of a discharge from other than a circular pipe associated with a drainage area of two (2) acres or more.

(115) "Major outfall" means a major municipal separate storm sewer outfall.

(116) "Manmade" means constructed by humans.

(117) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(118) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(119) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest census by the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet, may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(120) "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(121) "Minor industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a major industry.

(122) "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(123) "mgd" means million gallons per day.

(124) "mg/l" means milligrams per liter, same as ppm, assuming unit density.

(125) "Municipal separate storm sewer" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

(a) Owned or operated by a state, city, town, county, district, association, or other public body created by or pursuant to law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the Commonwealth;

(b) Designed or used for collecting or conveying storm water;

(c) Which is not a combined sewer; and

(d) Which is not part of a POTW.

(126) "Municipality" means a city, district, or other public body created by or under the Kentucky revised statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under CWA Section 208 (33 USC 1288).

(127) "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements.

(128) "National pretreatment standard", "pretreatment standard", or "standard" means a federal regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 401 KAR 5:057.

(129) "New discharger" means, for purposes of 401 KAR 5:050

to 5:080, any building, structure, facility or installation:

(a)1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which has never received a finally effective NPDES or KPDES permit for discharges at that site; and

4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

(130) "New source" means:

(a) For purposes of 401 KAR 5:050 to 5:080, any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced:

1. After promulgation of EPA's standards of performance or pretreatment standards which are applicable to such source; or

2. After proposal of EPA's standards of performance or pretreatment standards which are applicable to such source, but only if the federal standards are promulgated within 120 days of their proposal; or

(b)1. For purposes of 401 KAR 5:057, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to the source if the standards are thereafter promulgated if:

a. The building, structure, facility or installation is constructed at a site at which no other source is located;

b. The building, structure, facility or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or

c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph 1b or c of this paragraph but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

(i) A placement, assembly, or installation of facilities or equipment;

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which may be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this clause.

(131) "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(132) "Nonpoint" means any source of pollutants not defined by a point source, as used in this chapter.

(133) "Nonprocess industry" means an industry that generates and discharges only nonprocess wastewater while engaged in commercial activities including manufacturing, resource recovery, products distribution, and wholesale and retail trade. Each industry discharges nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharges wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration for fifty (50) percent mortality (ninety-six (96) LC_{50}) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be from a minor industry.

(134) "NPDES" means National Pollutant Discharge Elimination System.

(135) "Oil" means, for purposes of 401 KAR 5:090, natural crude oil or petroleum and other hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form and which are not the result of condensation of gas after it leaves the underground reservoir.

(136) "O&M" means operation and maintenance.

(137) "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction, operation, or maintenance of any facility.

(138) "Operator" means:

(a) Any person involved in the operation of a facility or activity;

(b) For purposes of 401 KAR 5:010, any person involved in the operation of a wastewater system; or

(c) For purposes of 401 KAR 5:090, any person who operates a facility.

(139) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

(140) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the Commonwealth, but does not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the Commonwealth and are used to convey waters of the Commonwealth.

(141) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(142) "Overflow" means:

(a) Any intentional or unintentional diversion of flow from a facility; or

(b) For purposes of 401 KAR 5:057, the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(143) "Owner" means any person who possesses any interest in:

(a) The right to develop, operate, or produce oil or gas; or

(b) Any facility or activity.

(144) "Pass through" means a discharge which exits the POTW into waters of the Commonwealth in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation.

(145) "pCi/l" means picocuries per liter.

(146) "PCR" means primary contact recreation.

(147) "Permit" means a KPDES permit.

(148) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants are or may be discharged. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(149) "POTW" means publicly owned treatment works as defined in KRS 224.01-010.

(150) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation, of municipal sewage and industrial waste.

(151) "ppb" means parts per billion; assuming unit density, same as µg/l.

(152) "ppm" means parts per million; assuming unit density, same as mg/l.

(153) "Preexisting discharge" means any discharge that is occurring when applying for a KPDES permit under 401 KAR 5:029 or 5:040.

(154) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited by 401 KAR 5:057. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that may interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit, calculated in accordance with 401 KAR 5:057.

(155) "Pretreatment requirement" means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(156) "Pretreatment standard" means a national pretreatment standard.

(157) "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(158) "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.

(159) "Primary responsibility" means having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the Commonwealth, or to supervise others in conducting these practices.

(160) "Privately-owned treatment works" means any device or system which is used to treat wastes from any facility or source of sewage whose owner or operator is not the owner or operator of the treatment works and which is not a POTW.

(161) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(162) "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

(163) "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(164) "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(165) "RCRA" means the Resource Conservation Recovery Act as amended (42 USC 6901 et seq.).

(166) "Reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (seeding or planting) work has commenced.

(167) "Recommencing discharger" means a source which recommences discharge after terminating operations.

(168) "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(169) "Register" means to file forms with the division which contain information as to oil and gas well geographic location, production, produced water production, methods used for treating, storing, or disposing of produced water, and other information deemed necessary by the division.

(170) "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(171) "Removal" means, for purposes of 401 KAR 5:057, a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration may be obtained by physical, chemical, or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal shall not mean dilution of a pollutant in the POTW.

(172) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

(173) "Requester" means any industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

(174) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(175) "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(176) "SARA" means the Superfund Amendments and Reauthorization Act, as amended.

(177) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(178) "SCR" means secondary contact recreation.

(179) "Secondary contact recreation waters" means those waters that are suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(180) "Secondary industry category" means any industry category which is not a primary industry category.

(181) "Secondary treatment" means that degree of treatment which results in an effluent quality which meets the minimum requirements of 401 KAR 5:045.

(182) "Seven-Q-ten" or "$7Q_{10}$" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(183) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage shall not mean economic loss caused by delays in production.

(184) "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places together with industrial wastes or underground, surface, storm or other water, as may be present.

(185) "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a wastewater treatment plant. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water run-off, that are discharged to or otherwise enter a wastewater treatment plant.

(186) "Sewer line" means those devices used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer which serves an individual building. A sewer line begins at the junction of two (2) building sewers which serve different buildings.

(187) "SIC" means Standard Industrial Classification.

(188) "Significant industrial user" means:

(a) Except as provided in paragraph (b) of this subsection:

1. Industrial users subject to categorical pretreatment standards promulgated by EPA and codified in 40 CFR Chapter I, Subchapter N (Parts 401 through 471); and

2. Any other industrial user that:

a. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater;

b. Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

c. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria for a significant industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement, the control authority may, on its own initiative or in response to a petition received from an industrial user or a POTW, and in accordance with 401 KAR 5:057, determine that the industrial user is not a significant industrial user.

(189) "Significant materials" means, but is not limited to, and for purposes of 401 KAR 5:050 to 5:080: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

(190) "Silvicultural point source" means, for purposes of 401 KAR 5:050 to 5:080, any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the Commonwealth. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off.

(191) "Site" means, for purposes of 401 KAR 5:050 to 5:080, the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(192) "Sludge requirements" means the following statutory provisions and administrative regulations or permits issued thereunder, or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended; the Solid Waste Disposal Act (SWDA), as amended, including Title II, more commonly referred to as the Resource Conservation Recovery Act (RCRA) and administrative regulations contained in any sludge management plan prepared pursuant to Subtitle D of SWDA, as amended; the Clean Air Act, as amended; and the Toxic Substances Control Act, as amended.

(193) "SMCRA" means the Surface Mining Control and Reclamation Act, as amended (33 USC 1201 et seq.).

(194) "Small facility" means a WWTP with an average daily design capacity less than 10,000 GPD or sewer lines of less than 2,500 feet in length including appurtenances.

(195) "Small nonpublicly owned treatment works" means a facility which has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(196) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(197) "SPCC" means spill prevention control and countermeasure.

(198) "Standard" means:

(a) For purposes of 401 KAR 5:026, 5:029 or 5:031, a water quality standard; or

(b) For purposes of 401 KAR 5:057, a pretreatment standard.

(199) "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(200) "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.

(201) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw material storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the KPDES program under 401 KAR 5:055. For the categories of industries identified in paragraphs (a) to (j) of this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handing sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas including tank farms for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (k) of this subsection, the term includes only storm water discharges from all the areas except access roads and rail lines, that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this subsection, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in this subsection, include those facilities designated under 401 KAR 5:060, Section 12(1)(a). The following categories of facilities are considered to be engaging in an industrial activity for purposes of this subsection:

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 401 KAR 5:065, Section 4, except facilities with toxic pollutant effluent standards which are exempted under paragraph (k) of this subsection;

(b) Facilities classified as Standard Industrial Classifications 24 except 2434; 26 except 265 and 267; 28 except 283; 29; 311; 32 except 323; 33; 3441; and 373;

(c) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations, except for areas of coal mining operations that are no longer reclamation areas because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of these operations;

(d) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(e) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, that is waste that is received from any of the facilities described under this subsection, including those that are subject to regulation under Subtitle D of RCRA;

(f) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(g) Steam electric power generating facilities, including coal handling sites;

(h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except 4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (a) to (g) and (i) to (k) of this subsection are associated with industrial activity;

(i) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one (1.0) mgd or more, or required to have an approved pretreatment program under 401 KAR 5:057. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA;

(j) Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale;

(k) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 except 311, 323, 34 except 3441, 35, 36, 37 except 373, 38, 39, 4221-4225, and which are not otherwise included within categories of paragraphs (b) to (j) of this subsection.

(202) "Submission" means, for purposes of 401 KAR 5:057:

(a) A request by a POTW to the cabinet for approval of a pretreatment program; and

(b) A request by a POTW to the cabinet for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

(203) "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(204) "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(205) "SWDA" means the Solid Waste Disposal Act, as amended (42 USC 6901 et seq.).

(206) "Tank battery" means an installation where oil is collected from wellheads and is separated from produced water.

(207) "TDS" means total dissolved solids.

(208) "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 CFR Part 136.

(209) "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 CFR Part 136.

(210) "Toxic pollutant" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant listed as being toxic in 401 KAR 5:080.

(211) "Treatment lagoon" or "effluent lagoon" means, as used in 401 KAR 5:029 and as applied to facilities subject to 401 KAR 5:090, a secondary recovery or water-flood impoundment on which on-site construction commenced before May 19, 1980; owned or operated by a person eligible to receive a KPDES permit for a discharge from that impoundment, if used for the purpose of diluting produced water, and if the owner or operator received approval from the cabinet of its request for designation as such on or before September 4, 1986.

(212) "TSS" means total suspended solids.

(213) "Twenty-four (24) hour composite sample" means not less than twelve (12) effluent portions collected at regular intervals over a period of twenty-four (24) hours which are composited in proportion to flow.

(214) "Underground injection" means a well injection.

(215) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or technology-based effluent limitations because of factors beyond the reasonable control of the industrial user or permittee. An upset shall not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(216) "USC" means United States Code.

(217) "U.S. EPA" means the United States Environmental Protection Agency.

(218) "USGS" means the United States Geological Survey.

(219) "Variance" means any mechanism or provision under the KPDES administrative regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(220) "WAH" means warm water aquatic habitat.

(221) "Warm water aquatic habitat" or "WAH" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(222) "Wastewater system" means a sewage system as defined in KRS 224.01-010.

(223) "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

(224) "Water quality standard" means an administrative regulation promulgated by the cabinet establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use.

(225) "Well" or "water well" means:

(a) For purposes of 401 KAR 5:050 to 5:080, a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; or

(b) For purposes of 401 KAR 5:090, a borehole drilled, or proposed to be drilled for the purpose of producing gas or oil or one through which gas or oil is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas, produced water, or other fluid therein or one into which any water, gas, produced water, or other fluid is being injected.

(226) "Well injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

(227) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(228) "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(229) "WWTP" means wastewater treatment plant.

(230) "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.

Section 2. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.:

(1) 40 CFR Part 116, "Designation of Hazardous Substances under the Federal Water Pollution Control Act", U.S. Environmental Protection Agency, as of August 25, 1993;

(2) 40 CFR Part 136, "Test Procedures for the Analysis of Pollutants", U.S. Environmental Protection Agency, as of September 11, 1992; and

(3) 40 CFR Chapter I, Subchapter N, Parts 401 through 471, "Effluent Guidelines and Standards", U.S. Environmental Protection Agency, as of July 1, 1993.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for June 28, 1994, at 10 a.m. (eastern time), in the Auditorium of the State Office Building at Mero and High Streets in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by June 23, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard 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 cabinet with a written copy of their testimony, if available. A transcript of the hearing may 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 at the address below no later than the close of business (4:30 p.m., eastern time) on June 28, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before June 23, 1994 between 8:00 a.m. and 4:30 p.m. (eastern time).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 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 regulation defines the terms used by regulations throughout 401 KAR Chapter 5. As such, it does not directly impact entities. Any impact of these regulations would occur in the specific regulation where the term is actually used. This regulation includes terms for the Kentucky Pollutant Elimination Discharge System (KPDES) regulations, pretreatment standards, certification of wastewater treatment operators, oil and gas requirements, and other regulations in 401 KAR Chapter 5. It is being promulgated to comply with KRS 13A.222(4)(e). As current regulations are amended, their definitions will be added to this regulation so that there will be one central location where terms used in Chapter 5 are defined.

(a) Direct and indirect costs or savings to those affected: None; any direct or indirect costs or savings would occur in the regulation where the term is used.

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; any impact on reporting and paperwork requirements would occur in the regulation where the term is used.

(2) Effects on the promulgating administrative body: There are no effects on this agency from defining these terms; any impact would occur when the terms are used in the particular regulation.

(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: There are no reporting and paperwork requirements imposed by the terms defined in this regulation.

(3) Assessment of anticipated effect on state and local revenues: None. This regulation defines terms used in 401 KAR Chapter 5; it will not impact state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Division of Water considered defining all terms used in each regulation in Section 1 of that regulation, but that approach would have required that many terms be duplicated throughout each individual regulation. That would have generated longer regulations, requiring more printing time, paper, and other resources. Also, if a definition changed, then each regulation would have had to be amended. Therefore to save time and expenses, both by this agency and the Regulations Compiler, the division decided that one regulation will be used to define the terms used by 401 KAR Chapter 5. This approach will also make it easier for the regulated community and public to find the definitions that appear throughout the chapter.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: During the transition phase when all the regulations in Chapter 5 are being amended and all their definitions will be moved to this regulation, some regulations may contain the same definitions that are written into this regulation, or may contain the same terms but updated definitions. That duplication or potential conflict will occur only until this agency amends those regulations to delete the definitions that are duplicated or updated.

(a) Necessity of proposed regulation if in conflict: Since this agency is not amending all of the regulations in Chapter 5 at this time, there will need to be some duplication, until all the definitions in each individual regulation are deleted. Then the definitions that are in 401 KAR 5:001 will apply.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: There is no need to; if a particular regulation has a different definition of a term than what appears in this regulation, the definition in the specific regulation will apply until this agency amends that regulation, and deletes the definition that is in duplication or that is different.

(6) Any additional information or comments: The requirement of KRS 13A.222(4)(e) necessitated a change to the way this agency defined its terms throughout Chapter 5. Previously, regulations which governed a particular program were grouped together, with definitions applying to that program being defined in one location for those regulations. For example, definitions which applied to the water quality standards regulations are presently defined in 401 KAR 5:029,

and definitions which applied to the KPDES regulations are presently defined in 401 KAR 5:050. However, KRS 13A.222(4)(e) requires that definitions be placed in Section 1 of each regulation, or the first regulation in a chapter. Since the first option would have placed undue burdens on this agency and the Regulations Compiler (see response to (4)), the Division of Water has selected the second option of placing all definitions in the first regulation of the chapter.

TIERING: Was tiering applied? No, tiering was not applied to this regulation since it merely defines terms that are used in other regulations in this chapter. Therefore, tiering is not applicable. The individual regulations where the terms are used may be tiered.

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 regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to city, county, or other municipal governments which construct or operate facilities which discharge into waters of the Commonwealth. Those local governments will apply these definitions to their facilities, but any impact will occur where the term is actually applied in a particular regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. None; since this regulation merely defines terms, it does not impact the expenditures or revenues of a local government.

Revenues (+/-) None
Expenditures (+/-): None
Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that there be a definitions regulation, nor is there a federal mandate that Kentucky adopt the programs to which these definitions apply. Some terms that are in this regulation are the same as the federal regulation. For instance, the federal pretreatment requirements (including definitions) are in 40 CFR Part 403 and the federal National Pollutant Discharge Elimination System program is in 40 CFR Parts 122, 124, 125, 129, 133, 136, and 400 through 471.

2. State compliance standards. The corresponding state regulations for the federal NPDES regulations are in 401 KAR 5:050 to 5:080, but are being amended to incorporate the federal changes that have occurred to that program since 1985; some of these new federal definitions are being incorporated into this regulation. The corresponding state regulation for the pretreatment standards is being rewritten into a new state regulation that is included in this regulatory package; the new federal definitions are included in this regulation.

3. Minimum or uniform standards contained in the federal mandate. There are no specific standards; but the federal definitions occur in various places throughout the federal programs and federal guidance documents.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, this regulation will incorporate the same federal definitions, once all the state regulations are promulgated.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. They are not stricter than the federal requirements.

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

401 KAR 5:057. KPDES pretreatment requirements.

RELATES TO: KRS 224.10-100, 224.10-210, 224.16-050, 224.70-100, 224.70-110, 224.99-010, 40 CFR 1.25(e), 25, 128.140(b) (1977), 136, 261, 403 Appendix A, 403 Appendix D, 503, 33 USC 1251 et seq.

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.10-110, 40 CFR 1.25(e), 25, 128.140(b) (1977), 136, 261, 403 Appendix A, 403 Appendix D, 503, 33 USC 1251 et seq.

NECESSITY AND FUNCTION: This administrative regulation implements Sections 204(b)(1)(c), 208(b)(2)(c)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(h)(5) and 301(i)(2), 304(e) and (g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act of 1977 (PL 95-217) or "the Act." It establishes responsibilities of the Commonwealth of Kentucky, local government, industry, and the public to implement the national pretreatment program to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works (POTWs) or which may contaminate sewage sludge. Its objectives are to prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; to prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with the treatment works; and to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

Section 1. Applicability. (1) This administrative regulation shall apply to:

(a) Pollutants from nondomestic sources which are directly or indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs;

(b) POTWs which receive wastewater from sources subject to national pretreatment standards; and

(c) New or existing sources subject to pretreatment standards.

(2) This administrative regulation shall not apply to sources which lawfully discharge to a sewer which is not connected to a POTW treatment plant.

Section 2. Local Law. Nothing in this administrative regulation is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as local requirements are not less stringent than those set forth in state or national pretreatment standards, or other requirements or prohibitions established under the Act or this administrative regulation.

Section 3. Pretreatment Standards: Prohibited Discharges. (1)(a) General prohibition. A user may not introduce into a POTW any pollutant which causes pass-through or interference. This general prohibition and the specific prohibitions in subsection (2) of this section shall apply to each user introducing pollutants into a POTW whether or not the user is subject to other national pretreatment standards or national or local pretreatment requirements.

(b) Affirmative defenses. A user shall have an affirmative defense in action brought against it alleging a violation of the general prohibitions established in paragraph (a) of this subsection and the specific prohibitions in subsection (2) of this section if the user demonstrates that:

1. It did not know or have reason to know that its discharge,

alone or in conjunction with discharges from other sources, would cause pass-through or interference; and

2.a. A local limit designed to prevent pass-through or interference was developed in accordance with subsection (3) of this section for each pollutant in the user's discharge that caused pass-through or interference, and the user was in compliance with each local limit directly prior to and during the pass-through or interference; or

b. If a local limit designed to prevent pass- through or interference has not been developed in accordance with subsection (3) of this section for the pollutant that caused the pass-through or interference, the user's discharge directly prior to and during the pass-through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's KPDES permit requirements and, if the violation was interference, was in compliance with applicable requirements for sewage sludge use or disposal.

(2) Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

(a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit (°F) or sixty (60) degrees Celsius (°C) using the test methods specified in 40 CFR 261.21;

(b) Pollutants which may cause corrosive structural damage to the POTW, but no discharges with pH lower than five (5.0), unless the POTW is specifically designed to accommodate the discharges;

(c) Solid or viscous pollutants in amounts which would cause obstruction to the flow in the POTW resulting in interference;

(d) Pollutants, including oxygen demanding pollutants (biochemical oxygen demand (BOD), etc.) released in a discharge at a flow rate or pollutant concentration which would cause interference with the POTW;

(e) Heat in amounts which would inhibit biological activity in the POTW resulting in interference, but no heat in quantities such that the temperature at the POTW treatment plant exceeds forty (40) °C (104 °F) unless the cabinet, upon request of the POTW, approves alternate temperature limits;

(f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that would cause interference or pass-through;

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quality that may cause acute worker health and safety problems; or

(h) Trucked or hauled pollutants, except at discharge points designated by the POTW.

(3) The POTW shall develop specific limits under the following conditions:

(a) Each POTW developing a pretreatment program pursuant to Section 6 of this administrative regulation shall develop and enforce specific limits to implement the prohibitions listed in subsections (1) and (2) of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce the limits.

(b) All other POTWs, if pollutants contributed by users result in interference or pass-through, and the violation is likely to recur, shall develop and enforce specific limits for industrial users, and all other users as appropriate, which, together with appropriate changes in the POTW's treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's KPDES permit or sludge use or disposal practices.

(c) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested these notices and had an opportunity to respond.

(4) Local limits. If specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with subsection (3) of this section, the limits shall be deemed pretreatment standards for the purposes of Section 307(d) of the Act.

(5) EPA and cabinet enforcement actions under Section 309(f) of the Clean Water Act. If, within thirty (30) days after notice of an interference or pass-through violation has been sent by EPA or the cabinet to the POTW and the persons or groups who have requested these notices, the POTW fails to commence appropriate enforcement action to correct the violations, EPA or the cabinet may take appropriate enforcement action under the authority provided in Section 309(f) of the Act.

Section 4. National Pretreatment Standards: Categorical Standards. National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories are established as separate federal regulations under the appropriate subpart of 40 CFR Chapter I, Subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this administrative regulation.

(1) Category determination request.

(a) Application deadline. Within sixty (60) days after the effective date of a pretreatment standard for a subcategory under which an industrial user may be included, the industrial user or POTW may request that the cabinet provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation which may be included in a subcategory, the existing industrial user shall request this certification prior to commencing discharge from the added or changed processes or operation. A new source shall request this certification prior to commencing discharge. If a request for certification is submitted by a POTW, the POTW shall notify affected industrial users of the submission. The industrial user may provide written comments on the POTW submission to the cabinet, within thirty (30) days of notification.

(b) Contents of application. Each request shall contain a statement:

1. Describing which subcategories might be applicable; and

2. Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. The person signing the application statement submitted pursuant to this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) Deficient requests. The cabinet shall act only on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions shall be notified by the cabinet that their requests are deficient and, unless the time period is extended, will be given thirty (30) days to correct the deficiency. If the deficiency is not corrected within thirty (30) days or within an extended period allowed by the cabinet, the request for a determination shall be denied.

(d) Final decision.

1. If the cabinet receives a submittal the cabinet shall, after determining that it contains all of the information required by paragraph (b) of this subsection, consider the submission, additional evidence that may have been requested, and other available information relevant to the request. The cabinet shall then make a written determination of the applicable subcategory and state the reasons for the determination.

2. If the request is submitted to the cabinet, the cabinet shall

forward the determination described in this paragraph to EPA which may make a final determination. EPA may waive receipt of these determinations. If EPA does not modify the cabinet's decision within sixty (60) days after receipt thereof, or if EPA waives receipt of the determination, the cabinet's decision shall be final.

3. If the request is submitted by the industrial user or POTW to EPA or if EPA elects to modify the cabinet's decision, EPA's decision shall be final.

4. EPA or the cabinet, as appropriate, shall send a copy of the determination to the affected industrial user and the POTW. If the final determination is made by EPA, EPA shall send a copy of the determination to the cabinet.

(e) Requests for hearing or legal decision. Within thirty (30) days following the date of receipt of notice of the final determination as provided for by paragraph (d) of this subsection, the requester may submit a petition to reconsider or contest the decision to the EPA regional administrator who shall act on the petition expeditiously and state the reasons for the determination in writing.

(2) Deadline for compliance with categorical standards. Compliance by existing sources with categorical pretreatment standards shall be within three (3) years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N. Direct dischargers with KPDES permits modified or reissued to provide a variance pursuant to Section 301(i)(2) of the Act shall meet compliance dates set in applicable categorical pretreatment standards. Existing sources which become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users unless the sources meet the definition of a new source. New sources shall install and have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time, not to exceed ninety (90) days, new sources shall meet all applicable pretreatment standards.

(3)(a) Concentration and mass limits. Pollutant discharge limits in categorical pretreatment standards shall be expressed either as concentration or mass limits. If possible, if concentration limits are specified in standards, equivalent mass limits will be provided so that local, cabinet, or federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard, or as otherwise specified by the standard.

(b) If the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.

(c) A control authority calculating equivalent mass per day limitations under paragraph (b) of this subsection shall calculate the limitations by multiplying the limits in the standard by the industrial user's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the industrial user's actual long term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

(d) A control authority calculating equivalent concentration limitations under paragraph (b) of this subsection shall calculate the limitations by dividing the mass limitations derived under paragraph (c) of this subsection by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the industrial user's actual long term average flow rate, such as the average daily flow rate during the representative year.

(e) Equivalent limitations calculated in accordance with paragraphs (c) and (d) of this subsection shall be deemed pretreatment standards for the purposes of Section 307(d) of the Act and this administrative regulation. Industrial users shall comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(f) Many categorical pretreatment standards specify one (1) limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four (4) day average, limitations. If these standards are being applied, the same production of flow figure shall be used in calculating both types of equivalent limitations.

(g) Industrial users operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. A user not notifying the control authority of an anticipated change shall meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

(4) Dilution prohibited as substitute for treatment. Unless expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in other ways attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The control authority may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases if the imposition of mass limitations is appropriate.

(5) Combined waste stream formula. If process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the control authority, or by the industrial user with the written concurrence of the control authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum values specified in the appropriate categorical pretreatment standards and an alternative consecutive sampling day average value using the monthly average values specified in the appropriate categorical pretreatment standards. The industrial user shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized if there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user shall immediately report the material or significant changes to the control authority. If appropriate, new alternative categorical limits shall be calculated within thirty (30) days.

(a) Alternative limit calculation. Either of the formulas in subparagraph 2 or 3 of this paragraph shall be used for deriving an alternative limit for a specified pollutant.

1. The average daily flow (F_D) shall be a reasonable measure of the average daily flow for a thirty (30) day period from the following sources; for new sources, flows shall be estimated using projected values:

a. Boiler blowdown streams, noncontact cooling streams, storm water streams, and demineralizer backwash streams. However, if these streams contain a significant amount of a pollutant, and the combination of these streams, prior to treatment, with an industrial user's regulated process waste streams will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may determine whether these streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user shall provide engineering, production, sampling and analysis and other information necessary so that the control authority is able to make its determination;

b. Sanitary waste streams that are not regulated by a categorical

pretreatment standard; or

c. From process waste streams which were or could have been entirely exempted from categorical pretreatment standards by the U.S. EPA for one (1) or more of the following reasons, and are listed in 40 CFR Part 403, Appendix D:

(i) The pollutants of concern are not detectable in the effluent from the industrial user;

(ii) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;

(iii) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the U.S. EPA administrator; or

(iv) The waste stream contains only pollutants which are compatible with the POTW.

2. Alternative concentration limit.

$$C_T = \left(\frac{\sum_{i=1}^{N} C_i F_i}{\sum_{i=1}^{N} F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

where:

C_T = the alternative concentration limit for the combined waste stream.

C_i = the categorical pretreatment standard concentration limit for a pollutant in the regulated stream i.

F_i = the average daily flow, at least a thirty (30) day average, of stream i to the extent that it is regulated for the pollutant.

F_D = the average daily flow, at least a thirty (30) day average, from subparagraph 1 of this paragraph.

F_T = the average daily flow, at least a thirty (30) day average, through the combined treatment facility, including F_i, F_D and unregulated streams.

N = the total number of regulated streams.

3. Alternative mass limit.

$$M_T = \left(\sum_{i=1}^{N} M_i \right) \left(\frac{F_T - F_D}{\sum_{i=1}^{N} F_i} \right)$$

where:

M_T = the alternative mass limit for a pollutant in the combined waste stream.

M_i = the categorical pretreatment standard mass limit for a pollutant in the regulated stream i, or the categorical pretreatment mass limit multiplied by the appropriate measure of production.

F_i = the average flow, at least a thirty (30) day average, of stream i to the extent that it is regulated for the pollutant.

F_D = the average daily flow, at least a thirty (30) day average, from subparagraph 1 of this paragraph.

F_T = the average daily flow, at least a thirty (30) day average, through the combined treatment facility, including F_i, F_D and unregulated streams.

N = the total number of regulated streams.

(b) Alternate limits below detection limit. An alternative pretreatment limit from paragraph (a) of this subsection shall not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(c) Self-monitoring. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements set forth in Section 9 of this administrative regulation.

(d) Choice of monitoring location. If a treated regulated process waste stream is combined prior to treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process waste stream or the combined waste stream for the purpose of determining compliance with applicable pretreatment standards. If the industrial user chooses to monitor the segregated process waste stream, it shall apply the applicable categorical pretreatment standard. If the user chooses to monitor the combined waste stream, it shall apply an alternative discharge limit calculated using the combined waste stream formula as provided in this section. The industrial user may change monitoring points only after receiving approval from the control authority. The control authority shall ensure that a change in an industrial user's monitoring points will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

Section 5. Removal Credits. (1)(a) General. Any POTW receiving wastes from an industrial user to which a categorical pretreatment standards applies may, subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical pretreatment standards. The POTW may grant a removal credit equal to or less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits in accordance with paragraph (c) of this subsection. Removal credits may be given only for indicator or surrogate pollutants regulated in a categorical pretreatment standard if the categorical pretreatment standard so specifies.

(b) Conditions for authorization to give removal credits. A POTW may give removal credits only if the following conditions are met:

1. Application. The POTW applies for, and receives, authorization from the cabinet to give a removal credit in accordance with the requirements and procedures specified in subsection (5) of this section.

2. Consistent removal determination. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with subsection (2) of this section.

3. POTW local pretreatment program. The POTW has an approved pretreatment program in accordance with and to the extent required by this administrative regulation; except, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in subsection (4) of this section.

4. Sludge requirements. The granting of removal credits will not cause the POTW to violate KRS Chapter 224 and administrative regulations promulgated pursuant thereto, or the local and federal sludge requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW may demonstrate to the cabinet that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial users to whom the removal credit would apply are required to meet their categorical pretreatment standards as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal credits, the additional sludge management costs shall not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants:

a.(i) For any of the pollutants listed in this clause for the use or disposal practice employed by the POTW when the requirements in 40 CFR Part 503 are met:

Pollutants	Use or Disposal Practice		
	LA[1]	SD[2]	I[3]

Arsenic	X	X	X
Beryllium			X
Cadmium	X		X
Chromium	X	X	X
Copper	X		
Lead	X		X
Mercury	X		X
Molybdenum	X		
Nickel	X	X	X
Selenium	X		
Zinc	X		
Total hydrocarbons, if the hydrocarbon is listed below.			X

where:

LA - Land application;

SD - Surface disposal site without a liner and leachate collection system; and

I - Firing of sewage sludge in a sewage sludge incinerator.

(ii) The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons in 40 CFR Part 503, Subpart E are met when sewage sludge is fired in a sewage sludge incinerator:

i. Acrylonitrile;
ii. Aldrin or dieldrin, or both (Total);
iii. Benzene;
iv. Benzidine;
v. Benzo(a)pyrene;
vi. Bis(2-chloroethyl)ether;
vii. Bis(2-ethylhexyl)phthalate;
viii. Bromodichloromethane;
ix. Bromoethane;
x. Bromoform;
xi. Carbon tetrachloride;
xii. Chlordane;
xiii. Chloroform;
xiv. Chloromethane;
xv. DDD, DDE, DDT;
xvi. Dibromochloromethane;
xvii. Dibutyl phthalate;
xvii. 1,2-dichloroethane;
xviii. 1,1-dichloroethylene;
xix. 2,4-dichlorophenol 1,3-dichloropropene;
xx. Diethyl phthalate;
xxi. 2,4-dinitrophenol;
xxii. 1,2-diphenylhydrazine;
xxiii. Di-n-butyl phthalate;
xxiv. Endosulfan;
xxv. Endrin;
xxvi. Ethylbenzene;
xxvii. Heptachlor;
xxviii. Heptachlor epoxide;
xxix. Hexachlorobutadiene;
xxx. Alpha-hexachlorocyclohexane;
xxxi. Betahexachlorocyclohexane;
xxxii. Hexachlorocyclopentadiene;
xxxiii. Hexachloroethane;
xxxiv. Hydrogen cyanide;
xxxv. Isophorone;
xxxvi. Lindane;
xxxvii. Methylene chloride;
xxxviii. Nitrobenzene;
xxxix. N-Nitrosodimethylamine;
xl. N-Nitrosodi-n-propylamine;
xli. Pentachlorophenol;
xlii. Phenol;
xliii. Polychlorinated biphenyls;
xliv. 2,3,7,8-tetrachlorodibenzo-p-dioxin;
xlv. 1,1,2,2,-tetrachloroethane;
xlvi. Tetrachloroethylene;
xlvii. Toluene;
xlviii. Toxaphene;
il. Trichloroethylene;
l. 1,2,4-Trichlorobenzene;
li. 1,1,1-Trichloroethane;
lii. 1,1,2-Trichloroethane; and
liii. 2,4,6-Trichlorophenol.

b. For any of the additional pollutants listed below for the use or disposal practice employed by the POTW when the concentration for a pollutant listed below in the sewage sludge that is used or disposed does not exceed the given concentration for that pollutant in milligrams per kilogram, dry weight basis.

Pollutant	Use or Disposal Practice			
		SDI		
	LA	Unlined[1]	Lined[2]	I
Arsenic			[3]100	
Aldrin or Dieldrin or both (Total)	2.7			
Benzene	[3]16	140	3400	
Benzo(a)pyrene	15	[3]100	[3]100	
Bis(2-ethylhexyl)-phthtlate		[3]100	100	
Cadmium		[3]100	[3]100	
Chlordane	86	[3]100	[3]100	
Chromium			[3]100	
Copper		[3]46	[3]100	1400
DDD, DDE, DDT (Total)	1.2	2000	2000	
2,4 Dichlorophenoxy-acetic acid		7	7	
Fluoride	730			
Heptachlor	7.4			
Hexachlorobenzene	29			
Hexachlorobutadine	600			
Iron	[3]78			
Lead		[3]100	[3]100	
Lindane	84	[3]28	[3]28	
Malathion		0.63	0.63	
Mercury		[3]100	[3]100	
Molybdenum		40	40	
Nickel			[3]100	
N-Nitroso-dimethylamine	2.1	0.088	0.088	
Pentachlorophenol	30			
Phenol		82	82	
Polychlorinated biphenyls	4.6	<50	<50	
Selenium		4.8	4.8	4.8
Toxaphene	10	[3]26	[3]26	
Trichloroethylene	[3]10	9500	[3]10	
Zinc		4500	4500	4500

where:

LA - Land application;

SD - Surface disposal;

I - Incineration;

[1] - Sewage sludge unit without a liner and leachate collection system;

[2] - Sewage sludge unit with a liner and leachate collection system; and

[3] - Value expressed in grams per kilogram, dry weight basis.

c. For any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in 40 CFR Part 258.

5. KPDES permit limitations. The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW may demonstrate to the cabinet that even though it is not presently in compliance with applicable limitations and conditions in its KPDES permit, it will be in compliance when the industrial users to whom the removal credit would apply are required to meet their categorical pretreatment standards, as modified by the removal credit provision.

(c) Calculation of revised discharge limits. Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1-r}$$

where:

x = pollutant discharge limit specified in the applicable categorical pretreatment standard;

r = removal credit for that pollutant as established under subsection (2) of this section; percentage removal expressed as a proportion; i.e., a number between zero and one (1); and

y = revised discharge limit for the specified pollutant, expressed in same units as x.

(2) Establishment of removal credits; demonstration of consistent removal.

(a) Consistent removal. Consistent removal shall be the average of the lowest fifty (50) percent of the removal measured according to paragraph (b) of this subsection. All sample data obtained for the measured pollutant during the time period prescribed in paragraph (b) of this subsection shall be reported and used in computing consistent removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW subject to approval by the cabinet. If the substance is not measurable in the influent, the data shall not be used. If the number of samples with concentrations equal to or above the limit of measurement is between eight (8) and twelve (12), the average of the lowest six (6) removals shall be used. If there are less than eight (8) samples with concentrations equal to or above the limit of measurement, the cabinet may approve alternate means for demonstrating consistent removal. Measurement refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(b) Consistent removal data. Influent and effluent operational data demonstrating consistent removal or other information as provided for in paragraph (a) of this subsection, which demonstrates consistent removal of the pollutants for which discharge limit revisions are proposed shall be considered by the cabinet. These data shall meet the following requirements:

1. Representative data; seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

2. Representative data; quality and quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if representative data can be obtained. If the data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided in paragraph (a) of this subsection.

3. Sampling procedures: composite.

a. The influent and effluent operational data shall be obtained through twenty-four (24) hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least twelve (12) aliquots shall be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites shall be flow proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots shall be combined in the laboratory immediately before analysis.

b.(i) Twelve (12) samples shall be taken at approximately equal intervals throughout one (1) full year. Sampling shall be evenly distributed over the days of the week so as to include nonworkdays as well as workdays. If the cabinet determines that this schedule is not the most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be approved.

(ii) In addition, upon the cabinet's concurrence, a POTW may utilize an historical data base amassed prior to November 5, 1987 if the data otherwise meet the requirements of this subsection. For the historical data base to be approved, it shall represent a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one (1) year.

c. Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the cabinet requires detention time compensation. The cabinet may require that each effluent sample be taken approximately one (1) detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period shall be based on a twenty-four (24) hour average daily flow value. The average daily flow used shall be based upon the average of the daily flows during the same month of the previous year.

4. Sampling procedures: grab. If composite sampling is not an appropriate sampling technique, grab samples shall be taken to obtain influent and effluent operational data. A grab sample shall be an individual sample collected over a period of time not exceeding fifteen (15) minutes. Collection of influent grab samples shall precede collection of effluent samples by approximately one (1) detention period. The detention period shall be based on a twenty-four (24) hour average daily flow value. The average daily flow used shall be based upon the average of the daily flows during the same month of the previous year. Grab samples shall be taken for example, if the parameters being evaluated are those, such as cyanide and phenol, which may not be held for an extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results.

5. Analytical methods. The sampling referred to in subparagraphs 1 to 4 of this paragraph and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or if the cabinet or EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by EPA.

6. Calculation of removal. All data acquired under the provisions of this section shall be submitted to the cabinet. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, if these data cannot be obtained, removal may be demonstrated using other data or procedures subject to concurrence by the cabinet as provided for in paragraph (a) of this subsection.

(3) Provisional credits. For pollutants which are not being discharged currently (i.e., new or modified facilities, or production

changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities if the quality and quantity of influent are similar. Within eighteen (18) months after the commencement of discharge of pollutants in question, consistent removal shall be demonstrated pursuant to the requirements of subsection (2) of this section. If, within eighteen (18) months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of subsection (2) of this section, the authority to grant provisional removal credits shall be terminated by the cabinet and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the cabinet.

(4) Exception to POTW pretreatment program requirement. A POTW required to develop a local pretreatment program by Section 6 of this administrative regulation may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:

(a) All industrial users who are currently subject to categorical pretreatment standards and who wish conditionally to receive a removal credit shall submit to the POTW the information required in Section 9(1) of this administrative regulation, except that new or modified industrial users shall submit only the information required by Section 9(1)(a) to (f) of this administrative regulation, pertaining to the categorical pretreatment standard as modified by the removal credit. The industrial users shall indicate what additional technology will be needed to comply with the categorical pretreatment standards as modified by the removal credit;

(b) The POTW shall have submitted to the cabinet an application for pretreatment program approval meeting the requirements of Sections 6 and 7 of this administrative regulation in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's KPDES permit.

(c) The POTW shall:

1. Compile and submit data demonstrating its consistent removal in accordance with subsection (2) of this section;

2. Comply with the conditions specified in subsection (1)(b) of this section; and

3. Submit a complete application for removal credit authority in accordance with subsection (5) of this section;

(d) If a POTW receives authority to grant conditional removal credits and the cabinet subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in paragraphs (b) and (c) of this subsection, the authority to grant conditional removal credits shall be terminated by the cabinet and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time as specified by the cabinet, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the cabinet.

(e) If a POTW grants conditional removal credits and the POTW or the cabinet subsequently makes a final determination, after appropriate notice, that the industrial users failed to comply with the conditions in paragraph (a) of this subsection, the conditional credit shall be terminated by the POTW or the cabinet for the noncomplying industrial users and the industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time as specified by the cabinet, not to exceed the period of time prescribed in the applicable categorical pretreatment standards. The conditional credit shall not be terminated if a violation of the provisions of this subsection results from causes entirely outside of the control of the industrial users or the industrial users had demonstrated substantial compliance.

(f) If the cabinet does not review an application for conditional removal credit authority upon receipt of the application, the conditionally revised discharge limits shall remain in effect until reviewed by the cabinet. This review shall occur no later than the time of a pretreatment program approval or a related KPDES permit reissuance, according to procedures in Section 8 of this administrative regulation.

(5) POTW application for authorization to give removal credits and cabinet review.

(a) Who shall apply. A POTW that wants to give a removal credit shall apply for authorization from the cabinet.

(b) To whom application shall be made. An application for authorization to give removal credits or modify existing ones shall be submitted by the POTW to the cabinet.

(c) When to apply. A POTW may apply for authorization to give or modify removal credits at any time.

(d) Contents of the application. An application for authorization to give removal credits shall include the following information:

1. List of pollutants. A list of pollutants for which removal credits are proposed.

2. Consistent removal data. The data required pursuant to subsection (2) of this section.

3. Calculation of revised discharge limits. Proposed revised discharge limits for each affected subcategory of industrial users calculated in accordance with subsection (1)(c) of this section.

4. Local pretreatment program certification. A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at subsection (4) of this section.

5. Sludge management certification. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in subsection (1)(b)4 of this section.

6. KPDES permit limit certification. A certification that the granting of removal credits will not cause a violation of the POTW's KPDES permit limits and conditions as required in subsection (1)(b)5 of this section.

(e) Cabinet's review. The cabinet shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of Section 8 of this administrative regulation and shall not have more than 180 days from public notice of an application to complete the review.

(f) Nothing in this administrative regulation precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

(6) Continuation and withdrawal of authorization.

(a) Effect of authorization. After a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard it may automatically extend that removal credit to the same pollutant if it is regulated in other categorical standards, unless granting the removal credit would cause the POTW to violate the sludge requirements identified in subsection (1)(b)4 of this section or its KPDES permit limits and conditions as required by subsection (1)(b)5 of this section. If a POTW elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory or one (1) or more industrial users that initially were not granted removal credits, it shall notify the cabinet.

(b) Inclusion in POTW permit. After authority is granted, the removal credits shall be included in the POTW's KPDES permit as soon as possible and shall become an enforceable requirement of the POTW's KPDES permit. The removal credits shall remain in effect for the term of the POTW's KPDES permit, if the POTW maintains

compliance with the conditions specified in paragraph (d) of this subsection.

(c) Compliance monitoring. Following authorization to give removal credits, a POTW shall continue to monitor and report on the POTW's removal capabilities at intervals as specified by the cabinet, but no less than once per year. A minimum of one (1) representative sample per month during the reporting period shall be taken, and all sampling data shall be included in the POTW's compliance report.

(d) Modification or withdrawal of removal credits.

1. Notice of POTW. The cabinet shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (c) of this subsection or other relevant information available to it, the cabinet determines:

a. That one (1) or more of the discharge limit revisions made by the POTW, or the POTW itself, no longer meets the requirements of this section; or

b. That the discharge limit revisions are causing a violation of conditions or limits contained in the POTW's KPDES permit.

2. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed sixty (60) days unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the cabinet shall either withdraw the discharge limits or require modifications in the revised discharge limits.

3. Public notice of withdrawal or modification. The cabinet shall not withdraw or modify revised discharge limits unless it has first notified the POTW and all industrial users to whom revised discharge limits have been applied, and made public, in writing, the reasons for the withdrawal or modification, and an opportunity is provided for a public hearing. Following the notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with the limits within a reasonable time as may be specified by the cabinet, not to exceed the period of time prescribed in the applicable categorical pretreatment standards.

(7) Compensation for overflow. POTWs which overflow untreated wastewater to receiving waters at least once annually may claim consistent removal of a pollutant only by complying with either paragraph (a) or (b) of this subsection. However, this subsection shall not apply if industrial users can demonstrate that overflow does not occur between the industrial users and the POTW treatment plant.

(a) The industrial user shall provide containment or otherwise shall cease or reduce discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the industrial user is connected. Discharges shall cease or be reduced, or pretreatment shall be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision shall be granted only if the POTW submits to the cabinet evidence that:

1. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an overflow event can reasonably be expected to occur, discharges from the regulated processes which contain pollutants for which an allowance is requested;

2. The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW shall also demonstrate that it will monitor and verify the data required in subparagraph 3 of this paragraph, to insure that industrial users are containing, ceasing or reducing operations during POTW system overflow; and

3. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, cabinet or EPA regional administrator, daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an overflow event was reasonably expected to occur; or

(b)1. The consistent removal claimed shall be reduced pursuant to the following equation:

$$r_c = r_m \frac{8760 - Z}{8760}$$

where:

r_m = POTW's consistent removal rate for that pollutant as established under subsection (2)(b) of this section;

r_c = removal corrected by the overflow factor; and

Z = hours per year that overflow occurred between the industrial users and the POTW treatment plant, the hours either to be shown in the POTW's current KPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant.

2. After July 1, 1983, consistent removal may be claimed only if reasonable efforts to correct the conditions resulting in untreated discharges by the POTW are underway in accordance with the policy and procedures set forth in 40 CFR Part 403, Appendix A, adopted without change. Revisions to discharge limits in categorical pretreatment standards may not be made if reasonable efforts have not been committed to by the POTW to minimize pollution from overflows. At a minimum, the POTW shall have completed the analysis required by 40 CFR Part 403, Appendix A and be making a reasonable effort to implement the plan.

3. If, by July 1, 1983, a POTW has begun the 40 CFR Part 403, Appendix A analysis but due to circumstances beyond its control has not completed it, consistent removal, subject to the approval of the cabinet, may continue to be claimed according to the formula in subparagraph 1 of this paragraph if the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the nonstructural cost-effective measures identified by the analysis; and if the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement other cost-effective overflow controls identified in the analysis if federal funds become available, applies for the funds, and proceeds with the required construction in an expeditious manner. In addition, consistent removal may, subject to the approval of the cabinet, continue to be claimed according to the formula in subparagraph 1 of this paragraph if the POTW has completed and the cabinet has accepted the analysis required by 40 CFR Part 403, Appendix A and the POTW has requested inclusion in its KPDES permit of an acceptable compliance schedule providing for timely implementation of cost-effective measures identified in the analysis. In considering what is timely implementation, the cabinet shall consider the availability of funds, cost of control measures, and seriousness of the water quality problem.

Section 6. Pretreatment Program Requirements: Development by POTW. (1) POTWs required to develop a pretreatment program. A POTW, or a combination of POTWs operated by the same authority, with a total design flow greater than five (5) million gallons per day (MGD) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall establish a pretreatment program. A POTW with a design flow of five (5) MGD or less shall

develop a pretreatment program if the cabinet determines that the nature or volume of the industrial wastewater, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant to prevent interference with the POTW or pass-through.

(2) Deadline for program approval. A POTW which meets the criteria of subsection (1) of this section and is identified through written notification by the cabinet shall develop and submit a pretreatment program for approval as soon as possible, but no later than one (1) year after written notification from the cabinet of the identification. The pretreatment program shall meet the criteria set forth in subsection (4) of this section and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(3) Incorporation of approved programs in permits. The POTW's KPDES permit will be reissued or modified by the cabinet to incorporate the approved program conditions as enforceable conditions of the permit. The modification of a POTW's KPDES permit for the purposes of incorporating a POTW pretreatment program approved in accordance with the procedures in Section 8 of this administrative regulation shall be deemed a minor permit modification subject to the procedures in 401 KAR 5:070.

(4) POTW pretreatment requirements. A POTW pretreatment program shall be based on the following legal authority and include the following procedures. These authorities and procedures shall be fully and effectively exercised and implemented.

(a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal courts or courts of the Commonwealth, which authorizes or enables the POTW to apply and to enforce federal or state statutes and any administrative regulations implementing those statutes. The authority may be contained in statutes, ordinances, or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW to:

1. Deny or condition new or increased contributions of pollutants or flows, or changes in the nature of pollutants, to the POTW by industrial users if the contributions do not meet applicable pretreatment standards and requirements or if the contributions would cause the POTW to violate its KPDES permit;

2. Require compliance with applicable pretreatment standards and requirements by industrial users;

3. Control through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. If industrial users are identified as significant, this control shall be achieved through permits or equivalent individual control mechanisms issued to each identified user. The control mechanisms shall be enforceable and contain, at a minimum, the following conditions:

a. A statement of duration of no more than five (5) years;

b. A statement of nontransferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

c. Effluent limits based on applicable general pretreatment standards in this administrative regulation, categorical pretreatment standards, local limits, and state and local law, whichever is more stringent;

d. Self-monitoring, sampling, reporting, notification and record-keeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in this administrative regulation, categorical pretreatment standards, local limits, and state and local law; and

e. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and applicable compliance schedules. The schedules may not extend the compliance date beyond applicable federal deadlines.

4. Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements and the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in Section 9 of this administrative regulation;

5. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter a premises of an industrial user in which a discharge source or treatment system is located or in which records are required to be kept to assure compliance with pretreatment standards and requirements. The authority shall be at least as extensive as the authority provided under Section 308 of the Act;

6.a. Obtain remedies for noncompliance by an industrial user with any pretreatment standards or requirements. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards or requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties, as authorized by law, in at least the amount of $1,000 a day for each violation by industrial users of pretreatment standards or requirements. POTWs whose approved pretreatment programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with Section 15 of this administrative regulation.

b. Pretreatment requirements which will be enforced through the remedies set forth in clause a of this subparagraph shall include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; rules, local regulations, or orders issued by the POTW; requirements set forth in individual control mechanisms issued by the POTW; and reporting requirements imposed by the POTW or this administrative regulation. The POTW shall have authority and procedures, after informal notice to the discharger, immediately and effectively to halt or prevent a discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedures, which shall include notice to the affected industrial users and an opportunity to respond, to halt or prevent a discharge to the POTW which presents or may present a danger to the environment or which threatens to interfere with the operation of the POTW. The cabinet shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the cabinet believes to be insufficient.

7. Comply with the confidentiality requirements set forth in Section 11 of this administrative regulation.

(b) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

1. Identify and locate all possible industrial users which might be subject to the pretreatment program. A compilation, index or inventory of industrial users made under this administrative regulation shall be made available to the cabinet upon request;

2. Identify the character and volume of pollutants contributed to the POTW by the industrial users identified in subparagraph 1 of this paragraph. This information shall be made available to the cabinet upon request;

3. Notify industrial users identified according in subparagraph 1 of this paragraph of applicable pretreatment standards and applicable requirements under Sections 204(b) and 405 of the Act and Subtitles C and D of the Resource Conservation and Recovery Act. Within thirty (30) days of approval pursuant to paragraph (f) of this subsec-

tion of a list of significant industrial users, notify each significant industrial user of its status and of all requirements applicable to it as a result of that status;

4. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in Section 9 of this administrative regulation;

5. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two (2) years, whether each significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge shall be a discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or noncustomary batch discharge. The results of these activities shall be available to the cabinet upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

a. Description of discharge practices, including nonroutine batch discharges;

b. Description of stored chemicals;

c. Procedures for immediately notifying the POTW of slug discharges, including a discharge that would violate a prohibition under Section 3 of this administrative regulation, with procedures for follow-up written notification within five (5) calendar days; and

d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, or measures and equipment necessary for emergency response.

6. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by Section 9 of this administrative regulation, or indicated by analysis, inspection, and surveillance activities described in subparagraph 5 of this paragraph. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

7. Comply with the public participation requirements of 40 CFR Part 25, adopted without change, in the enforcement of national pretreatment standards. These procedures shall include provisions for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user shall be in significant noncompliance if its violation meets one (1) or more of the following criteria:

a. Chronic violations of wastewater discharge limits, which shall be those violations in which sixty-six (66) percent or more of all of the measurements taken during a six (6) month period exceed by any magnitude the daily maximum limit or the average limit for the same pollutant parameter;

b. Technical review criteria (TRC) violations, which shall be those violations in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC. TRC = 1.4 for BOD, total suspended solids (TSS), fats, oil, and grease, and TRC = 1.2 for all other pollutants except pH;

c. Other violations of a pretreatment effluent limit (daily maximum or longer term average) that the control authority determines has caused, alone or in combination with other discharges, interference or pass-through, including endangering the health of POTW personnel or the general public;

d. A discharge of a pollutant that has caused imminent danger to human health, to welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (a)6b of this subsection to halt or prevent such a discharge;

e. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

f. Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance; or

h. Other violations or group of violations which the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

(c) Funding. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (a) and (b) of this subsection. In some limited circumstances, funding and personnel may be delayed if the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements described in this section; and a limited aspect of the program is not required to be implemented immediately.

(d) Local limits. The POTW shall develop local limits as required in Section 3(3)(a) of this administrative regulation or demonstrate that they are not necessary.

(e) The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

1. Describe how the POTW will investigate instances of noncompliance;

2. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

3. Identify by title the officials responsible for each type of response; and

4. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards as detailed in paragraphs (a) and (b) of this subsection.

(f) The POTW shall prepare a list of its industrial users meeting the criteria of a significant industrial user. The list shall identify the criteria applicable to each industrial user and, for industrial users meeting the criteria of a significant industrial user, shall also indicate if the POTW has made a determination that the industrial user is not a significant industrial user. This list, and subsequent modifications thereto, shall be submitted to the cabinet as a nonsubstantial program modification pursuant to Section 15(2)(b) of this administrative regulation. Discretionary designations or de-designations by the control authority shall be deemed to be approved by the cabinet ninety (90) days after submission of the list or modifications thereto, unless the cabinet determines that a modification is in fact a substantial modification.

Section 7. Pretreatment Programs or Authorization to Revise Pretreatment Standards: Submission for Approval. (1) Who approves program. A POTW requesting approval of a pretreatment program shall develop a program description which includes the information set forth in subsection (2)(a) through (d) of this section. This description shall be submitted to the cabinet which shall make a determination on the request for program approval in accordance with the procedures described in Section 8 of this administrative regulation.

(2) Contents of POTW program submission. The program description shall contain the following information:

(a) A statement from the city attorney or legal counsel that the

POTW has adequate authority to carry out the programs described in Section 6 of this administrative regulation. This statement shall:

1. Identify the provision of the legal authority which provides the basis for each procedure identified in Section 6(4)(b) of this administrative regulation;

2. Identify the manner in which the POTW will implement the program requirements set forth in Section 6 of this administrative regulation, including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permits, ordinance, etc.); and

3. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them if industrial users do not comply with them;

(b) A copy of statutes, ordinances, local regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising or funding the pretreatment program if approved;

(c) A brief description, including organization charts, of the POTW organization which will administer the pretreatment program. If more than one (1) agency is responsible for administration of the program the responsible agencies shall be identified, their respective responsibilities shall be delineated, and their procedures for coordination shall be set forth; and

(d) A description of the funding levels and full-time and part-time personnel available to implement the program.

(3) Conditional program approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements in subsection (2) of this section, but those requirements may be relaxed if the submission demonstrates that:

(a) A limited aspect of the program does not need to be implemented immediately;

(b) The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

(c) Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the cabinet will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(4) Content of removal allowance submission. The request for authority to revise categorical pretreatment standards shall contain the information required in Section 5(4) of this administrative regulation.

(5) Cabinet action. A POTW requesting pretreatment program approval shall submit to the cabinet two (2) copies of the submission described in subsection (2) of this section, and if appropriate, subsection (4) of this section. Within sixty (60) days after receiving the submission, the cabinet shall make a preliminary determination of whether the submission meets the requirements of subsection (2) of this section, and if appropriate, subsection (4) of this section. If the cabinet makes the preliminary determination that the submission meets these requirements, the cabinet shall:

(a) Notify the POTW that the submission has been received and is under review; and

(b) Commence the public notice and evaluation activities set forth in Section 8 of this administrative regulation.

(6) Notification if submission is defective. If, after review of the submission as provided for in subsection (5) of this section, the cabinet determines that the submission does not comply with the requirements of subsection (2) or (3) of this section and subsection (4) of this section, if appropriate, the cabinet shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of subsections (2) and (3) of this section and subsection (4) of this section, if appropriate.

(7) Consistency with water quality management plans.

(a) The pretreatment program shall be consistent with approved water quality management plans developed in accordance with Section 208 of the Clean Water Act and 40 CFR Parts 130, 131, as revised, if the Section 208 plan includes management agency designations and addresses pretreatment in a manner consistent with this administrative regulation. To assure this consistency the cabinet shall solicit the review and comment of the appropriate Section 208 planning agency during the public comment period provided for in Section 8 of this administrative regulation prior to approval or disapproval of the program.

(b) If no Section 208 plan has been approved or if a plan has been approved but lacks management agency designations or does not address pretreatment in a manner consistent with this administrative regulation, the cabinet shall nevertheless solicit the review and comment of the appropriate Section 208 planning agency.

Section 8. Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits. The following procedures shall apply in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization:

(1) Deadline for review of submission. The cabinet shall have ninety (90) days from the date of public notice of a submission complying with the requirements of Section 7 of this administrative regulation and, if removal credit authorization is sought, with Sections 5(5) and 7(4) of this administrative regulation, to review the submission. The cabinet shall review the submission to determine compliance with the requirements of Section 6(2) and (4) of this administrative regulation and if removal credit authorization is sought, with Section 5 of this administrative regulation. The cabinet may have up to an additional ninety (90) days to complete the evaluation of the submission if the public comment period provided for in subsection (2)(a) of this section is extended beyond thirty (30) days or if a public hearing is held as provided for in subsection (2)(b) of this section. The time for evaluation of the submission shall not exceed a total of 180 days from the date of public notice of a submission meeting the requirements of Section 7(2) of this administrative regulation and, if the application is a removal credit application, Sections 5(5) and 7(2) of this administrative regulation.

(2) Public notice and opportunity for hearing. Upon receipt of a submission the cabinet shall commence its review. Within twenty (20) work days after making a determination that a submission meets the requirements of Section 7(2) of this administrative regulation and if removal allowance approval is requested, Sections 5(5) and 7(4) of this administrative regulation, the cabinet shall:

(a) Issue a public notice of request for approval of the submission.

1. This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice shall include:

a. Mailing notices of the request for approval of the submission to designated Section 208 planning agencies, federal fish, shellfish, and wildlife resource agencies; Kentucky Department of Fish and Wildlife; and to other persons or groups who have requested individual notice, including those on appropriate mailing lists; and

b. Publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdictions served by the POTW. The cost of the advertisement shall be borne by the applicant.

2. The public notice shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the submission.

3. All written comments submitted during the thirty (30) day comment period shall be retained by the cabinet and considered in the decision on whether or not to approve the submission. The period for comment may be extended by the cabinet.

(b) Provide an opportunity for the applicant, an affected state, interested state or federal agencies, person, or group of persons to request a public hearing with respect to the submission.

1. This request for public hearing shall be filed within the thirty (30) day, or extended, comment period described in paragraph (a)2 of this subsection and shall indicate the interest of the person filing the request and the reasons why a hearing is warranted.

2. The cabinet shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.

3. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the submission under paragraph (a)1 of this subsection. The cost of the advertisement shall be borne by the applicant. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

(3) Cabinet decision. At the end of the thirty (30) day, or extended, comment period and within the ninety (90) day, or extended, period provided for in subsection (1) of this section, the cabinet shall approve or deny the submission based upon the evaluation described in subsection (1) of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. If the cabinet makes a determination to deny the request, the cabinet shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the cabinet may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) EPA objection to cabinet's decision. No pretreatment program or authorization to grant removal allowances shall be approved by the cabinet if following the thirty (30) day, or extended, evaluation period provided for in subsection (2)(a)2 of this section and a hearing held pursuant to subsection (2)(b) of this section the regional administrator sets forth in writing objections to the approval of the submission and the reasons for the objections. A copy of the regional administrator's objections shall be provided to the applicant and each person who has requested individual notice. The regional administrator shall provide an opportunity for written comments and may convene a public hearing on its objections. Unless retracted, the regional administrator's objections shall constitute a final ruling to deny approval of a pretreatment program or authorization to grant removal allowances ninety (90) days after the date the objections are issued.

(5) Notice of decision. The cabinet shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the cabinet shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the submission was published. The cabinet shall identify in the notice of pretreatment program approval any authorization to modify categorical pretreatment standards which the POTW may make, in accordance with Section 5 of this administrative regulation, for removal of pollutants subject to pretreatment standards.

(6) Public access to submission. The cabinet shall ensure that the submission and comments upon the submission are available to the public for inspection and copying.

Section 9. Reporting Requirements for POTWs and Industrial Users. (1) Reporting requirements for industrial users upon effective date of categorical pretreatment standard baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under Section 4 of this administrative regulation, whichever is later, existing industrial users subject to the categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall submit to the control authority a report which contains the information listed in this subsection, unless reports containing this information already have been submitted to the cabinet or regional administrator in compliance with 40 CFR 128.140(b) (1977). At least ninety (90) days prior to commencement of discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the control authority a report which contains the information listed in paragraphs (a) to (e) of this subsection. New sources shall also include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in paragraphs (d) and (e) of this subsection.

(a) Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.

(b) Permits. The user shall submit a list of environmental control permits held by or for the facility.

(c) Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operations carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(d) Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

1. Regulated process streams; and

2. Other streams as necessary to allow use of the combined waste stream formula of Section 4(5) of this administrative regulation, as referenced in paragraph (e)5 of this subsection. The control authority may allow for verifiable estimates of these flows if justified by cost or feasibility considerations.

(e) Measurement of pollutants.

1. The user shall identify the pretreatment standards applicable to each regulated process;

2. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, if mass is required by the standard or control authority, of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration, or mass, if required, shall be reported. The sample shall be representative of daily operations; and

3. A minimum of four (4) grab samples shall be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, twenty-four (24) hour composite samples shall be obtained through flow proportional composite sampling techniques if feasible. The control authority may waive flow proportional composite sampling for an industrial user that demonstrates that flow proportional sampling is not feasible. If flow sampling is not feasible, samples may be obtained through time proportional composite sampling techniques or through a minimum of four (4) grab samples if the user demonstrates that this will provide a representative sample of the effluent being discharged.

4. The user shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this subsection.

5. Samples shall be taken immediately downstream from pretreatment facilities if they exist or immediately downstream from the regulated process if no pretreatment facility exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment

the user should measure the flows and concentrations necessary to allow use of the combined waste stream formula of Section 4 of this administrative regulation to evaluate compliance with the pretreatment standards. If an alternate concentration or mass limit has been calculated in accordance with Section 4 of this administrative regulation, this adjusted limit and the supporting data shall be submitted to the control authority.

6. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or if the regional administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the regional administrator;

7. The control authority may allow the submission of a baseline report which utilizes only historical data as long as the data provide information sufficient to determine the need for industrial pretreatment measures;

8. The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that the sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW;

(f) Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(g) Compliance schedule. If additional pretreatment or O&M will be required to meet the pretreatment standards, the user shall submit the shortest schedule by which the industrial user will provide the additional pretreatment or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

1. If the industrial user's categorical pretreatment standard has been modified by a removal allowance pursuant to Section 4 of this administrative regulation, the combined waste stream formula pursuant to Section 4(5) of this administrative regulation, or a fundamentally different factors variance pursuant to Section 10 of this administrative regulation when the user submits the report required by this section, the information required by paragraph (f) of this subsection and this paragraph shall pertain to the modified limits.

2. If the categorical pretreatment standard is modified by a removal allowance pursuant to Section 5 of this administrative regulation, the combined waste stream formula pursuant to Section 4(5) of this administrative regulation, or a fundamentally different factors variance pursuant to Section 10 of this administrative regulation after the user submits the report required by this section, necessary amendments to the information requested by paragraph (f) of this subsection and this paragraph shall be submitted by the user to the control authority within sixty (60) days after the modified limit is approved.

(2) Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by subsection (1)(g) of this section:

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

(b) No increment referred to in paragraph (a) of this subsection shall exceed nine (9) months.

(c) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on the date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. No more than nine (9) months shall elapse between the progress reports to the control authority.

(3) Report on compliance with categorical pretreatment standard deadline. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or if a new source, following commencement of the introduction of wastewater into the POTW, an industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subsection (1)(d) to (f) of this section. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with Section 4(3) of this administrative regulation, this report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production or other measure of operation, this report shall include the user's actual production during the appropriate sampling period.

(4) Periodic reports on continued compliance.

(a) An industrial user subject to a categorical pretreatment standard, after the compliance date of the pretreatment standard, or, if a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard, by the control authority, or by the cabinet, a report indicating the nature and concentration of pollutants in the effluent which are limited by the categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subsection (1)(d) of this section except that the control authority may require more detailed reporting of flows. In consideration of factors such as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports shall be submitted.

(b) If the control authority has imposed mass limitations on industrial users as provided for by Section 4(4) of this administrative regulation, the report required by paragraph (a) of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(c) For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with Section 4(3) of this administrative regulation, the report required by paragraph (a) of this subsection shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production or other measure of operation, the report required by paragraph (a) of this subsection shall include the user's actual average production rate for the reporting period.

(5) Notice of potential problems, including slug loading. All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including slug loadings, by the industrial user.

(6) Monitoring and analysis to demonstrate continued compliance.

(a) The reports required in subsections (1), (3), and (4) of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass if requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the

control authority in lieu of the industrial user. If the POTW performs the required sampling and analysis in lieu of the industrial user, the user is not required to submit the compliance certification required under subsections (1) and (3) of this section. In addition, if the POTW itself collects all the information required for the report, including flow data, the industrial user is not required to submit the report.

(b) If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within thirty (30) days after becoming aware of the violation, except the industrial user is not required to resample if:

1. The control authority performs sampling at the industrial user at a frequency of at least once per month; or

2. The control authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(c) The reports required in subsection (4) of this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

(d) All analyses shall be performed in accordance with procedures established by the administrator pursuant to Section 304(h) of the Act and contained in 40 CFR Part 136 and amendments thereto or with other test procedures approved by the administrator. Sampling shall be performed in accordance with the techniques approved by the administrator. If 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or if the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator.

(e) If an industrial user subject to the reporting requirement in subsection (4) of this section monitors pollutants more frequently than required by the control authority, using the procedures prescribed in paragraph (d) of this subsection, the results of this monitoring shall be included in the report.

(7) Reporting requirements for industrial users not subject to categorical pretreatment standards. The control authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users shall submit to the control authority at least once every six (6) months, on dates specified by the control authority, a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR Part 136 and amendments thereto. If 40 CFR Part 136 does not contain sampling and analytical techniques for the pollutant in question, or if the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the administrator. This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user. If the POTW itself collects all the information required for the report, the noncategorical significant industrial user is not required to submit the report.

(8) Semiannual POTW reports. POTWs with approved pretreatment programs shall provide the cabinet with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one (1) jurisdiction is involved in the local program. The report required by this subsection shall be submitted no later than one (1) year after approval of the POTW's pretreatment program, and at least semiannually thereafter, and shall include, at a minimum, the following:

(a) An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements;

(b) A summary of the status of industrial user compliance over the reporting period;

(c) A summary of compliance and enforcement activities including inspections, conducted by the POTW during the reporting period; and

(d) Other relevant information requested by the cabinet.

(9) Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of a substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under subsection (15) of this section.

(10) Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by Section 6 of this administrative regulation.

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

(b) No increment referred to in paragraph (a) of this subsection shall exceed nine (9) months;

(c) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the cabinet including, as a minimum, whether or not it complied with the increment of progress to be met on the date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. No more than nine (9) months shall elapse between the progress reports to the cabinet.

(11) Signatory requirements for industrial user reports. The reports required by subsections (1), (3) and (4) of this section shall include the certification statement as set forth in Section 4(1)(b)2 of this administrative regulation and shall be signed as follows:

(a) By a responsible corporate officer, if the industrial user submitting the reports required by subsection (1) of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer shall be:

1. 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

2. The manager of one (1) or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 in second quarter 1980 dollars, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports required by subsection (1), (3), or (4) of this section is a partnership or sole proprietorship respectively.

(c) By a duly authorized representative of the individual designated in paragraph (a) or (b) of this subsection if:

1. The authorization is made in writing by the individual described in paragraph (a) or (b) of this subsection;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

3. The written authorization is submitted to the control authority.

(d) If an authorization in paragraph (c) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (c) of this subsection shall be submitted to the control authority prior to or together with reports to be signed by an authorized representative.

(12) Signatory requirements for POTW reports. Reports submitted to the cabinet by the POTW in accordance with subsection (7) of this section shall be signed by a principal executive officer, ranking elected official or other duly authorized employee if the employee is responsible for overall operation of the POTW.

(13) Provisions governing fraud and false statements. The reports and other documents required to be submitted or maintained under this section shall be subject to:

(a) The provisions of 18 USC Section 1001 relating to fraud and false statements;

(b) The provisions of Section 309(c)(4) of the Act, as amended, governing false statements, representation or certification; and

(c) The provisions of Section 309(c)(6) of the Act regarding responsible corporate officers.

(14) Recordkeeping requirements.

(a) Industrial users and POTWs subject to the reporting requirement established in this section shall maintain records of all information resulting from monitoring activities required by this section. These records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the persons taking the samples;

2. The date analyses were performed;

3. Who performed the analyses;

4. The analytical techniques or methods used; and

5. The results of the analyses.

(b) Industrial users or POTWs subject to the reporting requirements established in this section shall retain for a minimum of three (3) years records of monitoring activities and results, whether or not the monitoring activities are required by this section, and shall make the records available for inspection and copying by the cabinet and the regional administrator and POTW, if an industrial user. This period of retention shall be extended during the course of unresolved litigation regarding the industrial user or POTW or if requested by the cabinet or the regional administrator.

(c) A POTW to which reports are submitted by an industrial user pursuant to subsections (1), (3), (4), and (7) of this section shall retain the reports for a minimum of three (3) years and shall make the reports available for inspection and copying by the cabinet and the regional administrator. This period of retention shall be extended during the course of unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or if requested by the cabinet or the regional administrator.

(15)(a) The industrial user shall notify the POTW, the EPA regional waste management division director, and Kentucky Division of Waste Management in writing of a discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. The notification shall include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of this waste per calendar month to the POTW, the notification shall also contain the information in subparagraphs 1 to 3 of this paragraph to the extent the information is known and readily available to the industrial user. All notifications shall have occurred within 180 days of July 24, 1990. Industrial users who commence discharging after July 24, 1990 shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. A notification under this subsection shall be submitted only once for each hazardous waste discharged. However, notifications of changed discharges shall be submitted according to subsection (9) of this section. The notification requirement in this section shall not apply to pollutants already reported under self-monitoring requirements of subsections (1), (3), and (4) of this section.

1. An identification of the hazardous constituents contained in the wastes;

2. An estimation of the mass and concentration of the constituents in the waste stream discharged during that calendar month;

3. And an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months.

(b) Dischargers shall be exempt from the requirements of paragraph (a) of this subsection during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one (1) time notification. Subsequent months during which the industrial user discharges more than these quantities of hazardous waste do not require additional notification.

(c) If new federal regulations are promulgated under Section 3001 of RCRA, 42 USC 6921, identifying additional characteristics of hazardous waste or listing an additional substance as a hazardous waste, the industrial user shall notify the POTW, the EPA regional waste management division director, and Kentucky Division of Waste Management of the discharge of the substance within ninety (90) days of the effective date of the federal regulations.

(d) If a notification is made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

Section 10. Variances from Categorical Pretreatment Standards and Fundamentally Different Factors. (1) Purpose and scope. The U.S. EPA may, on a case-by-case basis, adjust the limits in categorical pretreatment standards, making them either more or less stringent, as they apply to a certain industrial user within an industrial category or subcategory. This adjustment will be done only if factors fundamentally different from those considered by EPA in developing the limit at issue are indicated by data specific to that industrial user. Interested persons believing that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that user and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical pretreatment standard, may request a fundamentally different factors variance under this section or such a variance request may be initiated by the U.S. EPA.

(2) Criteria.

(a) General criteria. A request for a variance based upon fundamentally different factors shall be approved by EPA only if:

1. There is an applicable categorical pretreatment standard which specifically controls the pollutant for which alternative limits have been requested;

2. Factors relating to the discharge controlled by the categorical pretreatment standard are fundamentally different from the factors

considered by EPA in establishing the standards; and

3. The request for a variance is made in accordance with the procedural requirements in subsections (6) and (7) of this section.

(b) Criteria applicable to less stringent limits. A variance request for the establishment of limits less stringent than required by the standard shall be approved by EPA only if:

1. The alternative limit requested is no less stringent than justified by the fundamental difference;

2. The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under Section 3 of this administrative regulation;

3. The alternative limit will not result in a nonwater quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the pretreatment standards; and

4. Compliance with the standards, either by using the technologies upon which the standards are based or by using other control alternatives, would result in either:

a. A removal cost, adjusted for inflation wholly out of proportion to the removal cost considered during development of the standards; or

b. A nonwater quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the standards.

(c) Criteria applicable to more stringent limits. A variance request for the establishment of limits more stringent than required by the standards shall be approved by EPA only if:

1. The alternative limit request is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative limit would not result in either:

a. A removal cost, adjusted for inflation wholly out of proportion to the removal cost considered during development of the standards; or

b. A nonwater quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the standards.

(3) Factors considered fundamentally different. Factors which may be considered fundamentally different are:

(a) The nature or quality of pollutant contained in the raw waste load of the user's process wastewater;

(b) The volume of the user's process wastewater and effluent discharged;

(c) Nonwater quality environmental impact of control and treatment of the user's raw waste load;

(d) Energy requirements of the application of control and treatment technology;

(e) Age, size, land availability, and configuration as they relate to the user's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology; and

(f) Cost of compliance with required control technology.

(4) Factors which shall not be considered fundamentally different. A variance request or portion of such a request under this section shall not be granted on the following grounds:

(a) The feasibility of installing the required waste treatment equipment within the time the Act allows;

(b) The assertion that the standards cannot be achieved with the appropriate waste treatment facilities installed, if the assertion is not based on factors listed in subsection (3) of this section;

(c) The user's ability to pay for the required waste treatment; or

(d) The impact of a discharge on the quality of the POTW's receiving waters.

(5) Local law. Nothing in this section shall be construed to impair the right of a locality under Section 510 of the Act to impose more stringent limitations than required by federal law or this administrative regulation.

(6) Application deadline.

(a) Requests for a variance and supporting information shall be submitted in writing to the cabinet.

(b) To be considered, a request for a variance shall be submitted no later than 180 days after the date on which a categorical pretreatment standard is published in the Federal Register.

(c) If the user has requested a categorical determination pursuant to Section 4(1) of this administrative regulation, the user may await the results of the category determination before submitting a variance request under this section. If the user so elects, the user shall submit the variance request within thirty (30) days after a final decision has been made on the categorical determination pursuant to Section 4(1)(d) of this administrative regulation.

(7) Contents submission. Written submissions for variance request made to the cabinet shall include:

(a) The name and address of the person making the request;

(b) Identification of the interest of the requester which is affected by the categorical pretreatment standard for which the variance is requested;

(c) Identification of the POTW currently receiving the waste from the industrial user for which alternative discharge limits are requested;

(d) Identification of the categorical pretreatment standards which are applicable to the industrial user;

(e) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;

(f) The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified in paragraph (e) of this subsection;

(g) A description of the industrial user's existing water pollution control facilities;

(h) A schematic flow representation of the industrial user's water system including water supply, process wastewater systems, and points of discharge; and

(i) A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the pretreatment standard.

(8) Deficient requests. The cabinet will act only on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the cabinet that their requests are deficient and unless the time period is extended, will be given up to thirty (30) days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the cabinet, the request for a variance shall be denied.

(9) Public notice. Upon receipt of a complete request, the cabinet shall provide notice of receipt, opportunity to review the submission, and opportunity to comment.

(a) The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:

1. The POTW into which the industrial user requesting the variance discharges;

2. Adjoining states whose waters may be affected; and

3. Designated Section 208 planning agencies, federal fish, shellfish and wildlife resource agencies; the Kentucky Department of Fish and Wildlife; and to other persons or groups who have requested individual notice, including those on appropriate mailing lists.

(b) The public notice shall provide for a period not less than thirty (30) days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

(c) Following the comment period, the cabinet will make a determination on the request taking into consideration comments received. Notice of this final decision shall be provided to the requester, the industrial user for which the variance is requested if

different than the requester, the POTW into which the industrial user discharges, and all persons who submitted comments on the request.

(10) Review of requests by state.

(a) If the cabinet finds that fundamentally different factors do not exist, it may deny the request and notify the requester, the industrial user if they are not the same, and the POTW of the denial.

(b) If the cabinet finds that fundamentally different factors do exist, it shall forward the request, with a recommendation that the request be approved, to the regional administrator or the regional administrator's delegate.

(11) Review of requests by EPA.

(a) If the regional administrator or the regional administrator's delegate finds that fundamentally different factors do not exist, the regional administrator or delegate shall deny the request for a variance and send a copy of that determination to the cabinet, to the POTW, and to the requester and the industrial user, if they are not the same.

(b) If the regional administrator or the regional administrator's delegate finds that fundamentally different factors do exist, and that a partial or full variance is justified, the regional administrator or delegate will approve the variance. In approving the variance, the administrator or the delegate will:

1. Prepare recommended alternative discharge limits for the industrial user either more or less stringent than those prescribed by the applicable categorical pretreatment standard to the extent warranted by the demonstrated fundamentally different factors;

2. Provide the following information in the regional administrator's written determination:

a. The recommended alternative discharge limits for the industrial user concerned;

b. The rationale for the adjustment of the pretreatment standard, including the reasons for recommending that the variance be granted, and an explanation of how the recommended alternative discharge limits were derived;

c. The supporting evidence submitted to the regional administrator or the regional administrator's delegate; and

d. Other information considered by the regional administrator or the regional administrator's delegate in developing the recommended alternative discharge limits;

3. Notify the cabinet and the POTW of the regional administrator's determination; and

4. Send the information described in subparagraphs 1 and 2 of this paragraph to the requester and to the industrial user if they are not the same.

(12) Request for hearing.

(a) Within thirty (30) days following the date of receipt of the notice of the decision of the administrator's delegate on a variance request, the requester or other interested persons may submit a petition to the regional administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the industrial user the person shall simultaneously serve a copy of the request on the industrial user.

(b) If the regional administrator declines to hold a hearing and the regional administrator affirms the findings of the regional administrator's delegate, the requester may submit a petition for a hearing to the Environmental Appeals Board, described in 40 CFR 1.25(e), within thirty (30) days of the regional administrator's decision.

Section 11. Confidentiality. (1) Authorities. In accordance with KRS 224.10-210 and administrative regulations promulgated pursuant thereto, information submitted to the cabinet pursuant to this administrative regulation may be claimed as confidential by the submitter.

(2) POTW. All other information submitted to the POTW shall be available to the public at least to the extent provided by KRS 61.870 to 61.882 and 61.960 to 61.975.

Section 12. Net-gross Calculation. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with this section.

(1) Application. Industrial users wishing to obtain credit for intake pollutants shall apply to the control authority. Upon request of the industrial user, the applicable standard will be calculated on a net basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of subsections (2) and (3) of this section are met.

(2) Criteria.

(a) The industrial user shall demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as BOD, TSS, and oil and grease shall not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standards, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standards adjusted under this section.

(d) Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.

(3) The applicable categorical pretreatment standards contained in 40 CFR Chapter I, Subchapter N specifically provide that they shall be applied on a net basis.

Section 13. Upset Provision. (1) Effect of an upset. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (2) of this section are met.

(2) Conditions necessary for a demonstration of upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the industrial user can identify the causes of the upset;

(b) The facility was being operated in a prudent and workmanlike manner and was in compliance with applicable operation and maintenance procedures when the upset occurred;

(c) The industrial user has submitted the following information to the control authority within twenty-four (24) hours of becoming aware of the upset; if this information is provided orally, a written submission shall be provided within five (5) days:

1. A description of the indirect discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

3. Steps being taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(3) Burden of proof. In enforcement proceedings the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(4) Reviewability of the cabinet's consideration of claims of upset. The cabinet shall review claims that noncompliance was caused by an upset. No determinations made in the course of the review shall constitute a final agency action subject to KRS 224.10-420. Industrial users shall have an opportunity for a hearing on claims of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(5) User responsibility if an upset occurs. The industrial user shall control production or all discharges to the extent necessary to

maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation if, among other things, the primary source of power of the treatment facility fails or is reduced or lost.

Section 14. Bypass. An industrial user shall comply with this section in addressing bypasses.

(1) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow a bypass to occur if it will not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to subsections (2) and (3) of this section.

(2) Notice.

(a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible at least ten (10) days before the date of the bypass.

(b) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within twenty-four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(3) Prohibition of bypass.

(a) Bypass is prohibited, and the control authority may take enforcement action against an industrial user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3. The industrial user submitted notices as required under subsection (2) of this section.

(b) The control authority may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the three (3) conditions listed in paragraph (a) of this subsection.

Section 15. Modification of POTW Pretreatment Programs. (1) General.

(a) Either the cabinet or a POTW with an approved POTW pretreatment program may initiate program modifications to reflect changing conditions at the POTW. Program modification is necessary if there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under Section 8 of this administrative regulation.

(2) Procedures. POTW pretreatment program modifications shall be accomplished as follows:

(a) For substantial modifications as described in subsection (3) of this section:

1. The POTW shall submit to the cabinet a statement of basis for the desired modification, a modified program description pursuant to Section 7(2) of this administrative regulation, or other documents the cabinet determines to be necessary under the circumstances.

2. The cabinet shall approve or disapprove the modification based on the requirements of Section 6 of this administrative regulation following the procedures in Section 8 of this administrative regulation.

3. The modification shall be incorporated into the POTW's KPDES permit after approval. The permit shall be modified to incorporate the approved modification in accordance with 401 KAR 5:070.

4. The modification shall become effective upon approval by the cabinet. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification under Section 8 of this administrative regulation.

(b) The POTW shall notify the cabinet of nonsubstantial modifications to its pretreatment program at least thirty (30) days prior to when they are to be implemented by the POTW in a statement similar to that provided for in paragraph (a) of this subsection. These nonsubstantial program modifications shall be deemed to be approved by the cabinet, unless the cabinet determines that a modification submitted is in fact a substantial modification, within ninety (90) days after the submission of the POTW's statement. Following approval by the cabinet, the modifications shall be incorporated into the POTW's permit in accordance with 401 KAR 5:070. If the cabinet determines that a modification reported by a POTW in its statement is in fact a substantial modification, the cabinet shall notify the POTW and initiate the procedures in paragraph (a) of this subsection.

(3) Substantial modifications.

(a) The following shall be substantial modifications for purposes of this section:

1. Changes to the POTW's legal authorities;

2. Changes to local limits, which result in less stringent local limits;

3. Change to the POTW's control mechanism, as described in Section 6 of this administrative regulation;

4. Changes to the POTW's method for implementing categorical pretreatment standards (e.g., incorporation by reference, separate promulgation, etc.);

5. A decrease in the frequency of self-monitoring or reporting required of industrial users;

6. A decrease in the frequency of industrial user inspections or sampling by the POTW;

7. Changes to the POTW's confidentiality procedures;

8. Significant reductions in the POTW's pretreatment program resources including personnel commitments, equipment, and funding levels; and

9. Changes in the POTW's sludge disposal and management practices.

(b) The cabinet may designate other specific modifications, in addition to those listed in paragraph (a) of this subsection, as substantial modifications.

(c) A modification that is not included in paragraph (a) of this subsection is nonetheless a substantial modification for purposes of this subsection if the modification:

1. Would have a significant impact on the operation of the POTW's pretreatment program;

2. Would result in an increase in pollutant loadings at the POTW; or

3. Would result in less stringent requirements being imposed on industrial users of the POTW.

Section 16. Federal Regulations Adopted Without Change. The cabinet shall be governed by the following federal regulations for the indicated subject matter; the federal regulations are hereby adopted without change. The federal regulations are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C., except as noted:

(1) 40 CFR 1.25(e), "Environmental Appeals Review Board", as in effect on February 13, 1992, for the appeals of the U.S. EPA's

granting of removal credits;

(2) 40 CFR Part 25, "Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act", as in effect on July 1, 1991, for public participation for enforcement of pretreatment standards;

(3) 40 CFR 128.140(b), "Pretreatment Standards; Time for compliance", as in effect on July 1, 1977, for the reporting of discharges by specified pretreatment plants. This document is available from the Kentucky Division of Water and the University of Kentucky Law School Library, Lexington, Kentucky;

(4) 40 CFR Part 136, "Test Procedures for the Analysis of Pollutants", as in effect on September 11, 1992, for sampling and analysis techniques;

(5) 40 CFR Part 261, "Identification and Listing of Hazardous Waste", as in effect on February 18, 1994, for hazardous waste determinations;

(6) 40 CFR Part 403, Appendix A, "Program Guidance Memorandum" as in effect on July 1, 1993, for claiming consistent removal for correcting conditions resulting in untreated discharges by a POTW;

(7) 40 CFR Part 403, Appendix D, "Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Waste stream Formula" as in effect on July 1, 1993, for the list of process waste streams that were or could have been entirely exempted by the U.S. EPA; and

(8) 40 CFR Part 503, "Standards for the Use or Disposal of Sewage Sludge", as in effect on July 1, 1993, for the eligibility of specific pollutants for removal credits.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for June 28, 1994, at 10 a.m. (eastern time), in the Auditorium of the State Office Building at Mero and High Streets in Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Jack A. Wilson in writing at the address noted below by June 23, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard 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 Cabinet with a written copy of their testimony, if available. A transcript of the hearing may 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 at the address below no later than the close of business (4:30 p.m., eastern time) on June 28, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before June 23, 1994 between 8:00 a.m. and 4:30 p.m. (eastern time).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 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 new regulation establishes the requirements for pretreatment programs of the Kentucky Pollutant Discharge Elimination System (KPDES) permit program. This regulation affects all publicly owned treatment works (POTWs) subject to pretreatment requirements in the Commonwealth, which represents 72 facilities. This regulation incorporates the previous KPDES pretreatment provisions from 401 KAR 5:055, Section 9. In addition, this regulation contains modifications to the federal pretreatment regulations updated to July 1, 1993 (40 CFR Part 403).

(a) Direct and indirect costs or savings to those affected: None. Any direct or indirect costs or savings would have occurred when the applicable federal regulations went into effect. This is because KPDES is a delegated federal permit program subject to federal requirements which is administered by the state of Kentucky.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There are no competitive impacts between states, because the federal regulations are applied nationwide.

(b) Reporting and paperwork requirements: None. Any change in reporting or paperwork would have occurred when the applicable federal regulations took effect.

(2) Effects on the promulgating administrative body: None. Any effects on the agency would have occurred when the federal regulations became effective.

(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. These changes will not impact state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Kentucky's KPDES delegation authority prohibits the use of provisions less stringent than what would be imposed by the federal agency. These regulations adopt the federal standards.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administration regulation or government policy conflicts, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No regulation conflicts.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: This new regulation is being proposed to address modifications to the federal regulations which need to be incorporated into state regulations. This is necessary to maintain delegation of the NPDES permit program.

TIERING: Was tiering applied? Yes. To the extent that the original federal regulation changes provided for tiering, these administrative regulation changes are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge from POTWs or their industrial users.

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 regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to any local government unit which operates facilities that discharge to waters of the Commonwealth.

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. None, because any impact on the expenditures and revenues of a local government would have occurred when the applicable federal regulation took effect. This may have led local governments to take actions (increase taxes or increase fees) to comply with the new federal regulations.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate on Kentucky to adopt this regulation. For Kentucky to maintain its delegation of authority over NPDES this updated and separate pretreatment regulation is being proposed. This involves the following federal regulation: 40 CFR Part 403.

2. State compliance standards. This regulation contains provisions and requirements that match the referenced updated federal requirements. These requirements pertain to expanding the applicability to more industrial users, increased public notification procedures, new criteria for inspections, etc.

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards being proposed for this regulation.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer

701 KAR 5:055. Removal hearing procedures.

RELATES TO: KRS 156.132

STATUTORY AUTHORITY: KRS 156.070

NECESSITY AND FUNCTION: KRS 156.132 provides authority to the State Board for Elementary and Secondary Education to remove local board of education members, superintendents, and public school officers upon a finding of misconduct or certain other offenses. This administrative regulation establishes procedures to be followed prior to and during the evidentiary hearing regarding the charges brought for removal.

Section 1. Definitions. "Officer" means district board member, superintendent of schools, or other public school officer.

Section 2. Preliminary Matters. (1) The statement of charges required by KRS 156.132(4) and (5) shall be served personally or by certified mail upon the officer being charged.

(2) At any time before the matter is submitted for final decision, the statement of charges may be amended or supplemented. If the amended or supplemented statement of charges presents new charges, the officer being charged shall be afforded a reasonable opportunity, and not less than thirty (30) days, to prepare his defense.

Section 3. Prehearing Procedures. If within the twenty (20) days provided in KRS 156.132(4) and (5) the officer being charged notifies the State Board for Elementary and Secondary Education (state board) of his intention to appear and answer the charges, the following prehearing procedures shall apply:

(1) If the officer charged retains an attorney to represent him at the hearing on the charges, the attorney shall file a written entry of appearance. All future notices, correspondence and other documents relative to the hearing shall be transmitted to that attorney on behalf of the officer charged.

(2) No later than five (5) days before the scheduled hearing on the charges, the attorney for the chief state school officer shall provide the officer and the state board a proposed witness list, identifying the specific counts to which each witness may testify, and he shall provide a list of proposed exhibits which may be presented at the hearing.

(3) No later than five (5) days before the scheduled hearing on the charges, the officer charged shall provide the attorney for the chief state school officer and the state board a proposed witness list, identifying the specific counts to which each witness may testify, and he shall provide a list of proposed exhibits which may be presented at the hearing.

(4) A witness or exhibit shall not be utilized at the hearing if not on the proposed witness or exhibit list, except when good cause is demonstrated or for rebuttal purposes.

(5) Subpoenas may be issued by the chairman of the state board upon the request of any party. Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.

(6) The testimony of any material witness may be taken by deposition only if:

(a) The witness will be unavailable at the time and date of the scheduled hearing or the witness cannot be compelled to attend; and

(b) Written authorization of the chairman of the state board is provided or there is agreement of the parties.

(7) If there is no agreement between the parties, the party requesting the deposition shall file a written request with the chairman of the state board stating:

(a) The name and address of the witness whose testimony is desired;

(b) The nature and materiality of the testimony; and

(c) The reasons why the witness will be unable or cannot be compelled to attend the hearing.

(8) Upon a proper showing, the chairman of the state board may issue an interim order requiring the witness to appear and to testify by deposition.

(9) The request for deposition shall be filed as soon as it becomes known that a witness will be unavailable at the time and date of the scheduled hearing. Any objection shall be filed no more than three (3) days after the filing of the written request.

(10) The cost of the deposition shall be paid by the party requesting the deposition.

Section 4. Hearing Procedures. The following hearing procedures shall apply:

(1) The chairman of the state board, the panel chairman, or the hearing officer may restrict the number of witnesses and set a reasonable time limit on the length of the hearing.

(2) Each party may cross-examine a witness called to testify by the opposing party on matters relevant to the issues.

(3) The hearing shall not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable 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.

(4) Hearsay evidence may be presented; however, irrelevant, immaterial, grossly prejudicial, highly unreliable, or unduly repetitious evidence may be excluded by the chairman of the state board, the panel chairman, or the hearing officer.

(5) When an exhibit is presented in the hearing on behalf of a party, the party shall have available sufficient copies of the document for the court reporter, each of the state board members, the state board's counsel, and the opposing party.

(6) The scheduled hearing may be rescheduled or continued only upon a showing of good cause or agreement of the parties, and written authorization of the chairman of the state board.

(7) The party seeking the continuance shall file with the chairman of the state board a written request stating the reason for the request or a statement indicating the agreement of the parties.

(8) The request for a continuance shall be filed no less than ten (10) days prior to the scheduled hearing. Any objection to the request shall be filed no more than three (3) days after the filing of request.

(9) If the hearing is held by a hearing officer or panel pursuant to KRS 156.071:

(a) The hearing officer or panel shall prepare a written recommendation of disposition, which shall include proposed findings of fact and conclusions of law;

(b) The recommendations shall be provided to the parties, who shall have ten (10) days from the date of entry of the written recommendations in which to file any exceptions to the recommendations;

(c) The party opposing the exceptions shall have ten (10) days from the filing of the exceptions in which to file any written response to the exceptions; and

(d) The written recommendations with exceptions and responses, if any, shall be forwarded to the state board for its final decision.

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Kevin Noland

(1) Type and number of entities affected: Only those local school officials charged with misconduct.

(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 effect 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 governmental 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 conflict.

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it.

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

702 KAR 3:270. SEEK funding formula.

RELATES TO: KRS 156.035, 156.070, 157.360, 157.410, 157.440, 157.620, 160.476, 160.477

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.035 and 156.070 set forth the State Board for Elementary and Secondary Education's plenary powers over the management and control of local school districts and disbursement of state appropriations. KRS 156.160 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations deemed necessary for the preparation of budgets and salary schedules for the school districts under its management and control. This administrative regulation is necessary to provide guidelines for the calculations to distribute the funds to school districts through Support Education Excellence in Kentucky (SEEK).

Section 1. Definitions. (1) "At-risk amount" means fifteen (15) percent of the per pupil guaranteed base funding provided pursuant to KRS 157.360(1) times the average of the highest number of approved applications for free meals in each of the eight (8) months (September through May excluding December) of the prior fiscal year and times the number of state agency children served pursuant to KRS 158.135.

(2) "Calculated base SEEK funding" means the guaranteed base funding provided in the biennial budget pursuant to KRS 157.360(1) plus the add-on components of the SEEK calculation including at-risk, home and hospital, exceptional children and transportation per KRS 157.360(2).

(3) "Collection rate" means the tax receipts collected for the prior year divided by the maximum revenue collectible. The maximum revenue collectible shall be the prior year's permissive tax revenue plus the levied rates per $100 of assessed value for real and tangible property and motor vehicles times the prior year assessment of real and tangible property and motor vehicles.

(4) "Debt service outstanding" means the amount of debt service in excess of eighty (80) percent of the allotment for the capital outlay component of SEEK plus the local revenue generated by the five (5)

cent equivalent tax levy required for the Facility Support Program of Kentucky participation per KRS 157.620(1)(a).

(5) "Exceptional child amount" means the December 1 exceptional child count of the preceding fiscal year by exceptionality weighted as follows:

(a) 2.35 times the per pupil base funding per KRS 157.360(1) for students with severe disabilities;

(b) 1.17 times the per pupil base funding per KRS 157.360(1) for students with moderate disabilities; and

(c) .24 times the per pupil base funding per KRS 157.360(1) for students with communications disabilities.

(6) "Growth" means the percent change in the second month average daily attendance times the prior year adjusted average daily attendance.

(7) "Home and hospital amount" means the current year first semester home and hospital average daily attendance plus the prior year second semester home and hospital average daily attendance, times the per pupil base funding per KRS 157.360(1), less the allotment for capital outlay.

(8) "Levied equivalent tax rate" means estimated permissive tax revenue plus the current year's levied real estate tax rate, tangible tax rate and motor vehicle tax rate per $100 of assessed value times the current year's assessment of real estate, tangible property and motor vehicles times the prior year's collection rate divided by the total current year's property and motor vehicle assessment.

(9) "Release time" means regularly scheduled time missed by students.

(10) "Shared time average daily attendance" means the average attendance for nondistrict students who attend public schools on a part-time basis.

(11) "State equalization amount" means 150 percent of the statewide average per pupil property assessment as provided in the biennial budget.

(12) "Tier I revenue" means revenue produced by a school district tax levy which, when equalized by state funds with the state equalization amount per KRS 157.440(1)(a), generates up to the maximum revenue allowable per KRS 157.440(1)(a), fifteen (15) percent above the calculated base SEEK funding.

(13) "Tier II revenue" means revenue produced by a school district tax levy above the Tier I tax levy which generates no more than the maximum revenue allowable per KRS 157.440(2), thirty (30) percent above the combined calculated base SEEK funding and Tier I revenue.

(14) "Transportation funding" means prior fiscal year calculated transportation costs for students in grades primary through twelve (12) transported by school districts as calculated by the Division of Pupil Transportation, Department of Education, pursuant to KRS 157.370 and adjusted by current year second month growth in transported students.

Section 2. SEEK Calculation Formula. (1) Required data for the SEEK calculation shall include:

(a) Property assessments from the Department of Property Taxation, Revenue Cabinet provided per KRS 160.470(5);

(b) Tax rates levied by school districts;

(c) Equivalent tax rates based on tax levies;

(d) Home and hospital average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education;

(e) Prior year adjusted average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education (in accordance with subsection (3) calculation below);

(f) The growth factor report from the Pupil Attendance Branch, Division of Finance, Department of Education;

(g) Transportation funding reported by the Division of Pupil Transportation, Department of Education;

(h) The number of at-risk students reported by the Division of School and Community Nutrition, Department of Education;

(i) The number of exceptional students in each disability category as reported by the Division of Exceptional Children Services, Department of Education;

(j) Vocational education average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education; and

(k) The state equalization amount.

(2) Assumptions used in the SEEK calculation shall include:

(a) Equivalent tax rates (ETR) shall be the lower of the ETR levied in the prior odd numbered year per KRS 157.440(1)(a) and the current year;

(b) Adjusted average daily attendance (AADA) plus growth shall be the prior year AADA plus the second month's percent attendance growth times prior year AADA; and

(c) Pro rata adjustment may be made to at-risk, exceptional child, and home and hospital amounts and to the state portion of Tier I funding and to transportation funding due to appropriations in the biennial budget.

(3) AADA shall be calculated for students in grades primary through twelve (12) as follows:

(a) Aggregate days attendance as reported by local school districts:

1. Divided by the number of school days taught as reported by local school districts;

2. Equals average daily attendance (ADA);

(b) ADA:

1. Plus shared time ADA as reported by local school districts;

2. Minus ADA for noncontract, nonresident students as reported by local school districts;

3. Minus release time as reported by local school districts;

4. Minus one-half (1/2) of the total aggregate kindergarten days attendance as reported by local school districts divided by the number of days taught;

5. Minus ADA for overage students as reported by local school districts;

6. Equals adjusted average daily attendance.

(4) The SEEK calculation shall be determined as follows:

(a) Per pupil guaranteed base funding per KRS 157.360(1):

1. Times prior year AADA plus growth;

2. Plus at-risk amount;

3. Plus exceptional child amount;

4. Plus home and hospital amount;

5. Plus transportation funding;

6. Equals calculated base SEEK funding;

(b) Calculated base SEEK funding:

1. Minus local effort required per KRS 160.470(12)(a);

2. Equals total state SEEK base;

3. Plus total state Tier I funding (in accordance with subsection (6) of this section calculation below);

4. Minus vocational education deduct amount (in accordance with subsection (7) of this section calculation below);

5. Plus hold harmless provision if provided in the biennial budget;

6. Plus prior year adjustments (if any);

7. Minus pro rata adjustments per KRS 157.430 (if any);

8. Equals state SEEK funding.

(5) The formula for the maximum Tier I equivalent tax rate allowable per KRS 157.440(1)(a) shall be as follows:

(a) Guaranteed base funding per KRS 157.360(1):

1. Plus calculated at-risk, exceptional child, home and hospital and transportation amounts:

2. Times fifteen (15) percent;

3. Divided by the greater of the state equalization amount and the local district per pupil assessment.

(6) State Tier I and Tier II funding formulas.

(a) For local districts which have levied an equivalent tax rate at or above the maximum Tier I equivalent tax rate, the state Tier I

funding formula shall be as follows:

1. Total calculated base SEEK funding per KRS 157.360;

a. Times maximum Tier I participation fifteen (15) percent per KRS 157.440(1)(a);

b. Equals total Tier I revenue;

c. Divided by prior year AADA plus growth;

d. Equals total per pupil Tier I revenue;

2. Total per pupil Tier I revenue:

a. Minus per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

b. Equals state portion per pupil Tier I funding;

c. Times prior year AADA plus growth;

d. Minus pro rata adjustments due to appropriation in the biennial budget;

e. Equals total state Tier I funding.

(b) For local districts which have not levied at or above the maximum Tier I equivalent tax rate per KRS 157.440(1)(a), the state Tier I funding formula shall be as follows:

1. Levied equivalent tax rate:

a. Minus required minimum thirty (30) cents equivalent tax rate per KRS 160.470(12)(a) and five (5) cents levy per KRS 157.620(1)(a);

b. Equals levied Tier I equivalent tax rate;

c. Times state equalization amount;

d. Equals per pupil total Tier I revenue;

2. Per pupil total Tier I revenue:

a. Minus per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

b. Equals state portion per pupil Tier I funding;

c. Times prior year AADA plus growth;

d. Minus pro rata adjustments due to appropriation in the biennial budget;

e. Equals total state Tier I funding.

(c) The Tier II calculation formula shall be as follows: Levied equivalent tax rate:

1. Minus required minimum thirty (30) cents equivalent tax rate per KRS 160.470(12)(a), the five (5) cents levy per KRS 157.620(1)(a), and the maximum Tier I equivalent tax rate;

2. Times total district assessment of property and motor vehicles;

3. Equals Tier II local revenue (not subject to state equalization).

(7) The vocational education deduct formula shall be as follows: Total state SEEK base:

(a) Divided by calculated base SEEK funding;

(b) Times per pupil guaranteed base funding per KRS 157.360(1);

(c) Times voc-ed deduct percentage as provided for in the biennial budget;

(d) Equals per pupil deduct amount;

(e) Times voc-ed ADA;

(f) Equals total voc-ed deduct amount.

Section 3. Facilities Support Program of Kentucky (FSPK) Calculation. (1) Data required for the FSPK calculation formula shall include:

(a) Property assessments from the Department of Property Taxation, Revenue Cabinet, per KRS 160.470(5);

(b) Equivalent tax rates based on tax levies from school districts;

(c) Prior year AADA as reported by the Pupil Attendance Branch, Division of Finance, Department of Education;

(d) Total annual debt service for school building revenue bonds; and

(e) State equalization amount.

(2) Assumptions used in the FSPK calculation shall include:

(a) No school district shall receive state equalization funds until the full five (5) cent equivalent tax required for participation has been levied;

(b) School districts which have levied a five (5) cent equivalent tax for building purposes per KRS 157.620(1)(a) shall qualify to receive state equalization funding when the district's outstanding debt service as of October 1 of each odd-numbered year is within $10,000 of the required amount; and

(c) A school district's eligibility for participation in the FSPK program shall be based on prior year AADA. State equalization funds shall be calculated based on prior year AADA plus growth.

(3) The FSPK eligibility calculation shall be as follows: Amount generated by a five (5) cent equivalent tax levy per KRS 157.620(1)(a):

(a) Equals total revenue available for debt service;

(b) Minus total current year debt service (from school district's outstanding school revenue bond issues);

(c) Equals debt service needed for equalization (positive amounts indicate ineligibility for equalization).

(4) Once a school district has been determined eligible for state FSPK funds, the state equalization calculation shall be as follows: Maximum eligibility (state equalization amount times .0005):

(a) Minus local effort (per pupil assessment times .0005);

(b) Equals per pupil state equalization;

(c) Times prior year AADA plus growth;

(d) Times pro rata adjustments due to appropriation in the biennial budget;

(e) Equals prorated state FSPK amount.

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Kyna Koch

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives, these calculations are required by statute.

(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: No

TIERING: Was tiering applied? No. Tiering was no appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Bureau of Learning Results Services

703 KAR 4:060. Academic expectations.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY AND FUNCTION: KRS 158.6455 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and school districts. Successful schools must be defined in terms of student achievement of the goals set forth in KRS 158.6451, and with reference to the statewide assessment program set forth in KRS 158.6453. This administrative regulation clarifies the academic expectations which may be addressed by the statewide assessment program administered pursuant to KRS 158.6453.

Section 1. The "Academic Expectations", dated May, 1994, for the statewide assessment program are hereby adopted and incorporated by reference, and may be inspected and copied at the Department of Education, Office of Curriculum, Assessment, and Accountability, 19th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Kevin Noland

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effect 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 governmental 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 conflict.

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Bureau of Learning Results Services

703 KAR 4:100. Grade placement of assessment program components.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6453

NECESSITY AND FUNCTION: KRS 158.6453 gives the State Board for Elementary and Secondary Education the responsibility for creating and implementing a statewide, primarily performance-based assessment program to ensure school accountability for student achievement of the goals set forth in KRS 158.645. In implementing this assessment program it is necessary to establish by administrative regulation the grade levels at which various components of the assessment program will be administered.

Section 1. Definitions. (1) "Transitional tests" means tests with multiple-choice questions, open-ended questions, and a writing assignment.

(2) "Performance events" means assessment tasks that require students to apply what they have learned in a real-life context.

(3) "Portfolio" means a collection of a student's best work in writing or mathematics.

Section 2. The transitional tests shall be administered in grades four (4), eight (8), and eleven (11).

Section 3. The performance events shall be administered in grades four (4), eight (8), and eleven (11).

Section 4. The writing portfolio shall be administered in grades four (4), eight (8), and twelve (12). Students exiting the primary program shall have completed at least one (1) piece of writing for use in developing the student's fourth grade writing portfolio.

Section 5. The mathematics portfolio shall be administered in grades five (5), eight (8), and twelve (12). High school students shall begin the development of their mathematics portfolios in grade nine (9).

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Neal Kingston

(1) Type and number of entities affected: 176 school districts and their schools.

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs, but reallocation of priorities within testing program to develop grade 5 benchmarks and to administer and score transitional tests in both grades 11 and 12.

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: Additional testing at grades 11 and 12 for one year.

(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:

(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 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development

704 KAR 3:401. Principal assessment centers.

RELATES TO: KRS 156.105

STATUTORY AUTHORITY: KRS 156.070, 156.105

NECESSITY AND FUNCTION: KRS 156.105 mandates that the Department of Education shall establish principal assessment centers prior to July 1, 1992, and that the State Board for Elementary and Secondary Education shall establish criteria for successful completion of the assessment center process. This administrative regulation implements the principal assessment center process.

Section 1. Definitions. (1) "Assessment center" means a psychometric procedure emphasizing multiple school activities, including individual and group exercises, used to develop a behavior profile on candidates seeking employment in principalship positions.

(2) "Assessment center candidate" means a principal or applicant for a principalship position who has been recommended by a district, vocational region, or the Kentucky Department of Education to undergo school assessment.

(3) "Assessee" means an individual who undergoes the assessment process.

(4) "Assessment" means an application of the NASSP process that requires assessees to function in simulated activities that are representative of the principalship position and yields an extensive diagnosis of each assessee's strengths and weaknesses in skill dimensions validated as essential for effective performance in the principalship.

(5) "Assessor" means a trained observer who records and analyzes assessee performance during a two (2) day assessment center.

(6) "Assessment team" means a group of assessors and a center director who analyze and judge the performance data of each assessee.

(7) "Written assessment report" means a performance report which describes each assessee's strengths, weaknesses, overall performance rating, suggestions to help improve the assessee's skills, and is signed by all assessment team members.

(8) "Principal" means the primary administrator and instructional leader of elementary, middle, secondary, vocational, and vocational rehabilitation schools.

(9) "Center director" means an individual who assumes full responsibility for conducting each assessment center and who meet certification requirements of center directors.

(10) "Successful completion" means an overall performance rating of a moderate or above on the majority of the skills assessed of the principal candidates, and for practicing principals it means passing on a pass-fail basis according to their performance in the assessor training.

(11) "NASSP (National Association of Secondary School Principals) assessment" means a methodology that is based on the

identification of generic skill dimensions specified as important for success in any school principalship position. The validated NASSP assessment consists of performance-based simulated exercises that can be observed, recorded, and analyzed.

(12) "Kentucky Department of Education Assessment Center" means an accredited program in the assessment center project operated by the NASSP that is conducted under contract according to NASSP specifications.

(13) "State principal assessment director" means an individual who serves as the primary director of the Kentucky Department of Education Assessment Center.

(14) "Assessor training" means training in which participants are taught how to observe and record behaviors displayed by assessment center candidates and are taught to write objective and comprehensive reports on the skill dimensions assessed.

Section 2. (1) Compliance with KRS 156.105 shall be granted to any principal who has:

(a) Successfully completed the NASSP assessment center process at any accredited NASSP assessment center; or

(b) Holds certification as an assessor in the NASSP assessment center.

(2) Successful completion of assessor training shall satisfy the assessment requirements for all previously employed principals.

(3) Request for recognition of compliance shall be made to the Kentucky Department of Education. Compliance status shall be granted to principals and applicants after the state principal assessment center director verifies "successfully completed" status.

Section 3. (1) The Kentucky Department of Education shall establish and operate regional principal assessment centers which shall be located in geographic areas throughout the state with consideration of location being given to the distribution of both the number of schools and the number of principals. Centers shall be responsible for the assessment of principals and principalship applicants as well as assuming the responsibility of providing assessor training.

(2) The state principal assessment center director shall coordinate the establishment of satellite principal assessment centers, provide staff for regional centers, and with the NASSP shall jointly provide training for center directors.

Section 4. (1) Before a candidate may be assessed in the principal assessment center, eligibility and selection requirements shall be met.

(2) Candidates shall be selected by local school district superintendents, vocational directors, vocational rehabilitation directors, or the state principal assessment director.

(3) Each district and vocational region may recommend no more than three (3) candidates for assessment for any single principalship position. Recommendations of candidates shall be listed in priority order and submitted to the state principal assessment director for assessment center assignment. Exceptions may be made by the state principal assessment director upon an appeal by the local district superintendent.

(4) Persons desiring to be assessed as principals, but who are not candidates at the time, shall have requests granted by the state principal assessment director as assessment center slots are available.

(5) Each assessment center candidate shall sign, prior to assessment, an agreement to respect the confidentiality of the assessment center process and materials.

Section 5. (1) All individuals previously employed as principals prior to July 1, 1994, shall successfully complete the principal assessor training which shall serve as the assessment for previously employed principals.

(2) All principal applicants who do not successfully complete the assessment process may be reassessed after one (1) year.

Section 6. (1) Upon completion of the NASSP assessment center process, center directors shall provide to a sponsoring nominator a written assessment report of the candidate's performance. The written assessment report shall include the assessee's strengths, weaknesses, overall performance rating, suggestions to help improve the assessee's skills, and signatures of all assessment team members.

(2) Each assessee, upon completion of the principal assessment center process, shall receive a final assessment report. The final assessment report shall include a written assessment report given to the assessee which provides the overall performance rating and the performance rating for each skill and includes suggestions for improvement and growth.

Section 7. The state principal assessment center director, in consultation with the principal assessment center director, shall allocate assessment center slots to local school districts and vocational regions. Final decisions concerning the allocation of assessment center slot shall be made by the state principal assessment center director. Districts and vocational regions with actual or imminent principalship vacancies shall be given priority in the assignment of assessment center slots.

Section 8. (1) Principal assessment assessors shall be certified jointly by the state principal assessment director and the NASSP principal assessment director. Minimum qualifications for assessors shall include:

(a) Experience as a principal or as a district-level or state-level employee in a supervisory role over principals;

(b) Successful completion of a formal assessor training program by the NASSP;

(c) Achievement of certification by the NASSP as an accredited assessor;

(d) Completion of a preassessment center briefing by the Kentucky Department of Education if six (6) months have elapsed since last service as an assessor;

(e) A high degree of competency in each of the skill dimensions assessed by the Kentucky Assessment Center as determined by the district superintendent or appropriate supervisor;

(f) A high-energy level and the willingness to work intensively during an assessment center; and

(g) Behavioral observation skills.

(2) Persons certified as assessors shall:

(a) Serve as an assessor in a minimum of one (1) assessment center;

(b) Adhere to the ethical standards of quality required by the NASSP and the Kentucky Department of Education in the use of the assessment center materials and processes;

(c) Maintain the copyright and confidentiality of the NASSP assessment center process and materials; and

(d) Maintain the confidentiality of the individual assessee performance data.

Section 9. (1) The state principal assessment center director shall maintain assessment center reports. Each written assessment report shall be the property of the Kentucky Department of Education and the school district or vocational region.

(2) Two (2) copies of each assessee's written assessment report shall be retained - one (1) copy for the school district or vocational region and one (1) for the state principal assessment center director. Written assessment reports shall be mailed to the school district superintendent or vocational director only.

(3) The security of assessment center data shall be maintained. Access to the district's copy of each assessment report shall be

restricted to the superintendent or vocational director or designee.

(4) Written assessment reports shall not be released to any outside party by any school district or vocational region. Reports shall be disseminated by the state principal assessment center director only after written authorization has been given by the assessee.

(5) The complete written assessment report shall be retained indefinitely in confidential state principal assessment center director files. Working documents used by the assessment team to formulate each report shall be discarded after five (5) years.

Section 10. To assure an adequate number of accessors are available for principal assessment purposes, each school district and vocational region shall provide a minimum of one (1) assessor for every three (3) principals currently employed in that district or vocational region. If less than three (3) principals are employed in a district or vocational region, the district or vocational region shall provide one (1) assessor each year.

Section 11. (1) Reimbursement for school district or vocational region. Assessees' and assessors' expense reimbursement shall be made in accordance with 200 KAR 2:006.

(2) Reimbursement for school district and vocational region assessee candidates shall be made by the Department of Education for up to three (3) assessee candidates per principalship opening.

(3) The Kentucky Department of Education shall pay a stipend for duties performed by an assessor.

(4) All other aspiring principals shall be responsible for any costs associated with the assessment as openings occur in the assessment centers.

Section 12. Complaints regarding failure to comply with statutory and regulatory provisions of the principal assessment program shall be directed to and evaluated by the Kentucky Department of Education. Whenever practicable, a decision on such complaints shall be made within sixty (60) days following written receipt of the complaint.

Section 13. The Kentucky Department of Education shall collect and analyze data on an annual basis regarding the performance and evaluation of assessors and assessees in the principal assessment center process.

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Audrey T. Carr

(1) Type and number of entities affected: Estimated 100-300 principals.

(a) Direct and indirect costs or savings to those affected: No impact.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: No impact.

(2) Effects on the promulgating administrative body: None

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not appropriate.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The change in the regulation was required to conform to the statute KRS 156.105 to treat all principal candidates from Kentucky the same as out-of-state candidate.

TIERING: Was tiering applied? No. Regulation applies equally to all school principals affected.

EDUCATION, ARTS, AND HUMANITIES
Department of Education
Office of Learning Programs Development

704 KAR 3:406. Superintendent training program and assessment process.

RELATES TO: KRS 156.111, 160.350

STATUTORY AUTHORITY: KRS 156.111

NECESSITY AND FUNCTION: KRS 156.111 mandates that the Kentucky Department of Education establish a superintendent training program and assessment center and that the State Board for Elementary and Secondary Education adopt administrative regulations to govern the training content, number of hours, written examination, and criteria for successful completion of the training and assessment center process. This administrative regulation implements the superintendent training program and assessment center process.

Section 1. Definitions. (1) "Assessee" means an individual who undergoes the assessment process.

(2) "Assessment center candidate" means a superintendent or applicant for a superintendent position who has been recommended by a local board of education or the Kentucky Department of Education to undergo assessment.

(3) "Assessor" means a trained observer who records and analyzes assessee performance during an assessment.

(4) "Assessor training" means training in which participants are taught how to observe and record behaviors displayed by assessment

center candidates and are taught to write objective and comprehensive reports.

(5) "Comprehensive superintendent examination" means a written comprehensive examination over the following subjects:

(a) Core concepts of management;

(b) School-based decision making;

(c) Kentucky school law;

(d) Kentucky school finance;

(e) School curriculum and assessment.

(6) "Final assessment report" means a written report providing the overall performance ratings as well as the performance rating for each skill, and shall include suggestions for improvement and growth, and signatures of all persons involved in the assessment process.

(7) "Mastery level on the Kentucky Superintendent Comprehensive Examination" means a required level of performance on each of the five (5) components of the Kentucky Superintendent Comprehensive Examination to be determined by an advisory committee to the Kentucky Department of Education based on technical reports secured from field test data obtained during the 1992-93 school year.

(8) "Screening committee" means the local superintendent search screening committee required by KRS 160.352.

(9) "Superintendent assessment and training and testing process" means a comprehensive assessment process and training program including assessment of personal administrative skills, training modules in identified skill dimensions and selected concepts related to the position of school superintendent, and a comprehensive examination. Assessment and training are more specifically defined as follows:

(a) "Assessment process" means a Kentucky Department of Education psychometric procedure emphasizing multiple individual and group simulations representative of the superintendent position which will yield extensive feedback of each assessee's strengths and behaviors in skill dimensions validated as essential for effective performance. The assessment process is used to develop a personal skills profile on candidates seeking employment or employed in superintendent positions.

(b) "Training program" means a series of training modules designed for the purpose of improving individual skills of superintendent candidates or providing knowledge in the following subjects:

1. Core concepts of management, up to eighteen (18) hours;

2. School-based decision making, up to nine (9) hours;

3. Kentucky school law, up to nine (9) hours;

4. Kentucky school finance, up to twelve (12) hours;

5. School curriculum and assessment, up to twenty-four (24) hours.

(10) "Written assessment report" means a report which provides each assessee with a profile of strengths and behaviors and suggestions to help improve the assessee's skills.

(11) "Written testing report" means a report which provides each assessee with certification of successful completion of each component of the comprehensive superintendent examination.

Section 2. (1) The Superintendent Training and Assessment Center shall be responsible for the assessment of superintendents and superintendent applicants, provide assessor training, provide training using Kentucky Department of Education approved modules, and serve as the site for the administration of the comprehensive superintendent examination.

(2)(a) The center staff shall coordinate assessments and trainings, maintain all records, make provisions for the necessary reporting of training and assessment status as to all superintendents, and report the status of all superintendent candidates to the chairperson of the local board of education.

(b) The report shall:

1. Be sent at the conclusion of participation in the training, testing, and assessment process;

2. Include a copy to the participating superintendent;

3. Specify whether the participating superintendent successfully completed the training, testing, and assessment process.

(c) A report shall be made to the assessee, the Office of Teacher Education and Certification, and the local board of education chairperson on any person serving in the position of superintendent, who does not complete the assessment and successfully complete the comprehensive superintendent examination within the applicable deadlines set forth in KRS 156.111 and 160.350.

Section 3. (1) The following requirements shall apply to a person hired for the first time as a superintendent in Kentucky after July 1, 1992 and before July 1, 1994:

(a) Superintendents who complete the assessment phase and demonstrate mastery on the Kentucky Superintendent Comprehensive Exam shall be certified as having met the requirements of KRS 156.111.

(b) A superintendent who does not demonstrate mastery on any one (1) of the components of the Kentucky Superintendent Comprehensive Exam shall be eligible to participate in a second training of the appropriate module(s) of the training program prior to retaking the comprehensive examination or shall retake the comprehensive examination on the next scheduled date of the examination.

(2) Persons employed as superintendent in Kentucky prior to July 1, 1992, may elect to not participate in any, or all, of the modules of the training phase and take the appropriate components of the comprehensive examination.

(a) Superintendents who complete the assessment phase and demonstrate mastery on the Kentucky Superintendent Comprehensive Exam shall be certified as having met the requirements of KRS 156.111.

(b) Superintendents who do not demonstrate mastery on the Kentucky Superintendent Comprehensive Exam shall be eligible to participate in further training in corresponding module(s) as a requirement for eligibility to repeating the comprehensive examination.

(3) A person hired for the first time as a superintendent in Kentucky after June 30, 1994, shall have one (1) year from the time of employment to successfully complete the assessment and training and testing program described in subsection (1)(a) and (b) of this section.

Section 4. (1) The Superintendent Training and Assessment Center director shall allocate training and assessment center slots, considering factors to assure diversity and equal access. Local school districts with actual or imminent superintendent vacancies shall be given priority in the assignment of training and assessment center slots.

(2) Each assessee, upon completion of the superintendent assessment center process, shall receive a final assessment report. Superintendents and superintendent candidates shall complete the requirements for training and assessment and achieve the designated mastery level on each of the modules of the Kentucky Superintendent Comprehensive Examination to successfully complete the training and testing and assessment.

(3) Upon completion of the assessment and successful completion of testing by superintendent candidates, the Superintendent Training and Assessment Center staff shall provide the Office of Teacher Education and Certification and the chairperson of the appropriate local board of education a written report confirming completion of the assessment and successful completion of testing.

(4) Persons desiring to be assessed as superintendent, but who are not employed as a superintendent or are not candidates for superintendency at the time, may have requests granted by the Superintendent Training and Assessment Center director at the candidate's expense.

(5) Prior to assessment, an assessment center candidate shall be required to sign an oath which pledges nondisclosure of the assessment center process and materials.

Section 5. (1) The Superintendent Training and Assessment Center staff shall maintain all assessment center reports.

(2) The security of training and testing and assessment data shall be maintained by the Superintendent Training and Assessment Center staff. Each written report shall be the property of the Kentucky Department of Education. Individual profile reports shall be disseminated by the Superintendent Training and Assessment Center staff only after written authorization has been given by the assessee.

(3) All complete written training and assessment center reports shall be retained in confidential Superintendent Training and Assessment Center files. Working documents used by the assessment or training team to formulate each report shall be discarded after three (3) years.

Section 6. The Kentucky Department of Education may pay a stipend for each assessment performed by an assessor and for services necessary to conduct training and testing as needed.

Section 7. Complaints regarding failure to comply with statutory and regulatory provisions of the Superintendent Training and Assessment Program shall be directed to and evaluated by the Kentucky Department of Education.

Section 8. (1) Continuing education for superintendents shall include:

(a) Participation in forty-two (42) hours of Kentucky Department of Education approved training over twenty-four (24) months; or

(b) Completion of an annual individual personal growth training plan of at least twenty-one (21) hours.

(2) Completion of continuing education of the superintendent shall be reported to the Kentucky Department of Education. The Kentucky Department of Education shall annually notify the local board of education chairperson of the status of the school district's superintendent's continuing education.

(3) Failure to comply with the requirements of this administrative regulation shall result in referral of the matter to the Education Professional Standards Board for consideration of revocation of the superintendent certificate.

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Audrey T. Carr

(1) Type and number of entities affected: Estimated 20-30 superintendent new-hires per year.

(a) Direct and indirect costs or savings to those affected: No impact.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: No impact.

(2) Effects on the promulgating administrative body: None

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not appropriate.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The change in the regulation was required to conform to the statute KRS 156.111 to treat all superintendent candidates from Kentucky the same as out-of-state candidates.

TIERING: Was tiering applied? No. Tiering is not applicable as the regulation applies equally to all affected superintendents.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

705 KAR 3:141. Area center or public high school, standards for vocational department.

RELATES TO: KRS 151B.025, 156.029

STATUTORY AUTHORITY: KRS 156.029, 156.070

NECESSITY AND FUNCTION: KRS 151B.025 transfers authority for state-operated area vocational education centers, except for program standards, to the Department of Adult and Technical Education, Workforce Development Cabinet. This administrative regulation establishes minimum standards for the management of a vocational department of a public high school or an area vocational education center owned by a local school district.

Section 1. A vocational department of a public high school or area vocational education center may be established when the following standards are met:

(1) The facility shall be used exclusively or principally for providing vocational education in no less than five (5) different occupational clusters to students in preparation for entering the workforce or postsecondary education.

(2) The facility shall provide the vocational preparation component of the educational program for a minimum of 180 high school students.

(3) Each vocational education program offered in the facility shall meet the minimum state requirements for teachers, curriculum, and equipment and be approved by the chief state school officer.

(4) For a department constructed as a separate facility to serve two (2) or more high schools in a single local school district, a

department constructed as a separate facility to serve two (2) or more high schools in two (2) or more local school districts, and a department constructed as a separate facility to serve only one (1) high school for a single local school district, the administrator of the center shall hold the certificate for administration, supervision, and coordination of vocational education. For a department constructed as an addition to the high school facility which is owned and operated by a single local school district for the benefit of only one (1) high school, the assistant high school principal or vocational education department head may be charged with supervision of the total vocational program; but he or she shall have the administration, supervision, and coordination certificate for vocational education.

(5) The facility shall be available to all residents of the area designated and approved by the State Board for Elementary and Secondary Education.

(6) The center shall be available, on a need basis and with approval of the State Board for Adult and Technical Education, to offer programs for postsecondary students and adults within the designated area.

(7) A minimum of five (5) acres of usable land shall be provided for building, expansion, and parking.

Section 2. The maintenance of area centers shall be provided as follows: maintenance of vocational education facilities owned by the local boards of education shall be the responsibility of the local boards of education and shall be accomplished from funds designated by the State Board for Elementary and Secondary Education. Maintenance shall be in accordance with current and approved plans and specifications filed in the office of the chief state school officer as specified by contractual agreements with the state board or its designated representatives.

Section 3. Requirements, procedures, and responsibilities in relation to construction of area vocational education schools shall be as follows:

(1) Any local educational agency preparing to construct an area vocational education school shall submit to the chief state school officer an appropriate application with proper explanation and supporting evidence to justify the need. Each local educational agency shall complete the necessary surveys to determine the needs, interests, and abilities of the potential enrollees, the demands of the labor market, and the facilities that can be provided.

(2) The State Board for Elementary and Secondary Education shall approve applications for area vocational education schools before any financial resources available shall be used for construction of a facility. Any local educational agency using local funds for the construction of an area vocational education school shall submit an application for program approval of the facility if operating expenses are anticipated from the financial resources available to the state board.

(3) Facilities which are constructed exclusively or principally for providing vocational education in less than the minimum number of vocational preparation programs as required in administrative regulations pertaining to minimum standards for establishing the facilities shall be constructed without federal financial assistance. The programs to be offered in the facilities shall be approved under normal procedures for operating vocational programs by the local educational agency.

Section 4. Procedures for determining the number of secondary school students eligible for enrollment in area vocational education centers when more than one (1) local school district enrolls students in such a facility shall be as follows:

(1) The enrollment quota for eligible secondary school students, fifteen (15) years of age and older, for each cooperating local school district utilizing the facilities of an area vocational education center shall be determined on a pro rata basis. Quotas shall be determined by the following factors:

(a) The ratio of secondary school students who are enrolled in grades nine (9) through twelve (12) in a given school district to the total number of students enrolled in grades nine (9) through twelve (12) in all of the cooperating local school districts;

(b) The total enrollment capacity of the area vocational education center during the regular school day; and

(c) The total capacity of each vocational education program offered in the area vocational education center during the regular school day.

(2) Each participating local school district shall receive its equitable quota of secondary school students to attend the center and to enroll in the different programs offered in the center. If a given local school district does not fill its quota, the enrollment vacancies shall be reallocated to the other cooperating local school districts on the same basis that the original quotas were established.

(3) Quotas shall be determined by the chief state school officer or the applicable regional executive director of vocational education and the principal of the area vocational education center working in cooperation with the official steering committee appointed for the area vocational education center. Quota calculations shall be submitted to the chief state school officer for consideration and approval.

(4) The State Board for Elementary and Secondary Education shall annually submit to the State Board for Adult and Technical Education a report on vocational education in these high schools.

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Rodney Kelly

(1) Type and number of entities affected: Local school districts - 176.

(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 effect upon competition): N/A

(b) Reporting and paperwork requirements: A memorandum of agreement is developed between the local school districts and

Kentucky Department of Education.

(2) Effects on the promulgating administrative body: This regulation establishes minimum standards for the management of a vocational department of a public high school or an area center owned by a local school district.

(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: This regulation includes the formula for allocation of state funds to locally operated area vocational centers and vocational departments in public high schools.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A.

(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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 school districts and 54 area vocational centers.

EDUCATION, ARTS AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

705 KAR 4:041. Cooperative program standards.

RELATES TO: KRS 151B.025, 156.029

STATUTORY AUTHORITY: KRS 156.029, 156.070

NECESSITY AND FUNCTION: KRS 151B.025 retains with the State Board for Elementary and Secondary Education the authority to prescribe program standards for area vocational education centers. This administrative regulation establishes program standards for cooperative vocational education in area vocational education centers and local school districts.

Section 1. Cooperative vocational education shall meet the following minimum requirements:

(1) Enrollees shall be at least sixteen (16) years of age and if below eighteen (18) they shall secure a verification of age issued by the local superintendent of schools. Students from eighteen (18) to twenty-one (21) years of age shall have a certificate of age on file with the employer.

(2) Enrollees shall have completed basic vocational course prerequisites required by the occupational program they are pursuing as identified in the Program of Studies for Kentucky Schools, 704 KAR 3:303.

(3) A student in cooperative education shall be enrolled in a related class under the direction of the teacher-coordinator. The student shall receive minimum classroom instruction equivalent to five (5) hours per week.

(4) The student may receive course credit for work experience directly related to the student's educational program and approvable under the Program of Studies for Kentucky Schools.

(5) The student shall be paid in accordance with local, state, and federal minimum wage requirements.

(6) A training agreement plan between school, student, and the employer shall be on file for each student.

(7) The teacher-coordinator shall receive at least one (1) class period during the regular school day for supervision of students. Additional periods for supervision may be justified based on the enrollment of the program.

Section 2. Cooperative teacher-coordinators shall meet the following requirements:

(1) Hold a teaching certificate designated for a teacher in an occupational program area in which the teacher-coordinator is coordinating cooperative vocational education experiences.

(2) Have a minimum of two (2) years teaching experience in an occupational program area. Exceptions shall include:

(a) Agricultural, marketing education and special vocational education teacher-coordinators shall not be required to have prior teaching experience.

(b) Teacher-coordinators of industrial cooperative programs who are graduates of an approved associate degree or bachelor's degree program may be certified without prior teaching experience.

(c) Home economics teacher-coordinators shall meet certification requirements for gainful home economics teachers.

(d) Teachers of cooperative work experience programs for special vocational programs shall have 2000 hours of paid work experience, with the work experience to be approved by the chief state school officer, and meet the certification requirements of the specific occupational program area.

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Rodney Kelly

(1) Type and number of entities affected: Local school districts - 176; area vocational centers - 54.

(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 effect upon competition): N/A

(b) Reporting and paperwork requirements: An annual cooperative education program report is submitted to the Kentucky Department of Education.

(2) Effects on the promulgating administrative body: This

regulation is necessary in order to establish standards for cooperative education programs in local school districts and area vocational centers.

(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: An annual cooperative education program report is submitted to the Kentucky Department of Education.

(3) Assessment of anticipated effect on state and local revenues: Cooperative education programs may indirectly impact the federal support for Kentucky's plan for school-to-work.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: N/A

(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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 school districts and 54 area vocational centers.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

705 KAR 4:051. Work experience program standards.

RELATES TO: KRS 151B.025, 156.029

STATUTORY AUTHORITY: KRS 156.029, 156.070

NECESSITY AND FUNCTION: KRS 151B.025 retains with the State Board for Elementary and Secondary Education the authority to prescribe program standards for area vocational education centers. This administrative regulation establishes program standards for work experience for special vocational education programs in area vocational education centers and local school districts.

Section 1. Supervised work experience, when feasible, shall be a program component for students enrolled in special vocational education programs. Such classes shall be organized through cooperative agreements between the school and the employer or institution providing on-the-job learning experience. Such arrangements shall provide for:

(1) Conformity with federal, state, and local labor regulations for the prevention of exploitation of students for private gain.

(2) An organized program of on-the-job training for each student.

(3) Supplemental related vocational instruction.

Section 2. Work experience programs shall be:

(1) Appropriate to the student's vocational objective.

(2) Of sufficient duration to develop competencies to prepare students for employment in their selected occupational fields.

(3) Supervised by a member of the school staff who is approved as special vocational teacher.

Section 3. Minimum standards for a work experience program in special vocational education shall include:

(1) Enrollees shall be at least fourteen (14) years of age and, if below eighteen (18), shall secure a verification of age issued by the local superintendent of schools. Students from eighteen (18) to twenty-one (21) years of age shall have a certificate of age on file with the employer.

(2) Students shall be enrolled in an approved special vocational education class under the direction of the teacher-coordinator.

(3) The student shall spend a minimum of fifteen (15) clock hours per week and shall receive payment for his work.

(4) The student shall be paid a fair wage in compliance with local, state, and federal minimum wage requirements.

(5) A training agreement between the school and the employer shall be on file for each student.

Section 4. An approved simulated work experience class shall be substituted for the on-the-job work experience in situations where actual on-the-job work experience is not feasible.

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Rodney Kelly

(1) Type and number of entities affected: Local school districts - 176.

(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 effect upon competition): N/A

(b) Reporting and paperwork requirements: An annual cooperative work experience report is submitted to the Kentucky Department of Education.

(2) Effects on the promulgating administrative body: This regulation is necessary to establish standards for work experience programs for students enrolled in special vocational programs.

(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: An annual cooperative work experience report is submitted to the Kentucky Department of Education.

(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 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

705 KAR 4:081. FFA leadership training center.

RELATES TO: KRS 151B.025, 156.029

STATUTORY AUTHORITY: KRS 156.029, 156.070

NECESSITY AND FUNCTION: KRS 151B.025 retains with the State Board for Elementary and Secondary Education the authority to prescribe program standards for area vocational education centers. This administrative regulation establishes procedures for operating and maintaining the Kentucky Future Farmers of America Leadership Training Center.

Section 1. The Kentucky FFA Leadership Training Center at Hardinsburg shall be operated and maintained as a definite part of the state program of agribusiness education. The center shall provide training in leadership and citizenship development for youth.

Section 2. The chief state school officer shall have general responsibility for the management and control of the center. The director of the center shall be an agribusiness education consultant who is a member of the staff in the Department of Education. The facilities shall be maintained by fees collected from members of the Kentucky Association of Future Farmers of America, by funds budgeted by the Department of Education, and by fees charged other groups using the center. The facilities shall be used by the members of the Kentucky Association FFA and other vocational education youth organizations for leadership training and recreation. When not used for vocational education purposes, the facility shall be available for use by other educational and agricultural organizations.

Section 3. The chief state school officer shall appoint an advisory committee whose duty it shall be to advise the director of agribusiness education and the director of the Leadership Training Center regarding the operation of the center. The advisory committee shall be composed of a representative from the agribusiness education unit, a representative from the teacher education staff in agribusiness education, two (2) teachers of vocational agriculture, and the president of the Kentucky Association of Future Farmers of America. The executive secretary of the Kentucky Association of Future Farmers of America shall be chairman of the advisory committee without a vote, and the director of the center shall serve as secretary without a vote.

Section 4. The director of the center shall, with the approval of the director of agribusiness education and with the advice of the advisory committee, schedule the use of the facilities and develop procedures for its operation in line with the objectives of the program.

Section 5. The director of the center and other full and part-time employees shall be employed by the chief state school officer. Purchases of supplies, equipment, food, soft drinks, maintenance items, repairs to equipment, capital outlay items, and other reoccurring purchases shall be made in accordance with administrative regulations of the State Board for Elementary and Secondary Education and applicable state statutes and budget appropriations.

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Rodney Kelly

(1) Type and number of entities affected: Kentucky FFA Leadership Training Center.

(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 effect upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: This regulation is necessary for establishing procedures for operating and maintaining the Kentucky FFA Leadership Training Center.

(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: N/A

(3) Assessment of anticipated effect on state and local revenues: The FFA Leadership Training Center is primarily operated with agency receipt funds that are collected from participating vocational student organizations and other educational groups.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: N/A

(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. Tiering was not appropriate in this administrative regulation because the administrative regulation

applies equally and indirectly to all 176 school districts and 54 area vocational centers.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

705 KAR 4:231. General program standards for secondary vocational education programs.

RELATES TO: KRS 151B.025, 156.029, 20 USC 2301-2471
STATUTORY AUTHORITY: KRS 156.029, 156.070, 20 USC 2301-2471
NECESSITY AND FUNCTION: KRS 151B.025 retains with the State Board for Elementary and Secondary Education the authority to prescribe program standards for area vocational education centers. This administrative regulation establishes those standards for secondary vocational education essential for compliance with federal vocational education acts.

Section 1. Secondary vocational education programs shall be designed to serve students enrolled in the following middle school and secondary program areas: agricultural education, business education, health and personal services, home economics, industrial/technology education, marketing education, special vocational programs, career exploration, and special applied academic area for vocational students. Instructional programs shall not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability, in violation of state or federal statutes.

Section 2. Instruction shall be designed to:
(1) Assist individuals in the process of preparing for school to work transition.
(2) Prepare individuals for advanced or highly skilled vocational and technical education programs, including Tech Prep, or entrance into college.
(3) Prepare individuals for gainful employment in recognized occupations and in new or emerging occupations.
(4) Assist individuals in obtaining computer literacy skills.

Section 3. The content of the instruction in secondary vocational programs shall:
(1) Be based on the skills, attitudes, and knowledge required to achieve the objectives of the instruction and include a planned sequence of courses or experiences necessary for the individual to achieve the objective;
(2) Be developed and conducted in consultation with employers and other individuals having skills and knowledge of the occupation or the occupational fields included in the instruction;
(3) Include the most up-to-date knowledge and skills necessary for competencies required to meet the objectives of such instruction; and
(4) Be sufficiently extensive in duration and intensive within a scheduled unit of time to enable students to achieve the objectives of the instruction.

Section 4. A student completing the requirements for a career major may receive a Certificate of Secondary Vocational Education Completion of Occupation Program.

Section 5. Secondary vocational programs shall be designed to accommodate students with special learning needs, i.e., the disadvantaged, the disabled and individuals with limited English proficiency. Special programming shall conform to the requirements outlined in the Program of Studies for Kentucky Schools, 704 KAR 3:303.

Section 6. Secondary vocational education programs shall provide a variety of learning experiences. Programs in grades six (6) through eight (8) shall be designed to allow students to become aware of and explore clusters of occupations. Programs in grades nine (9) and twelve (12) shall provide in-depth exploration, specialized skill development or prepare individuals for advanced education. Students enrolled in public or private schools shall be permitted to enroll in a state-operated vocational program consistent with that school district's enrollment quota.

Section 7. Vocational preparation programs shall provide a curriculum of sufficient length to permit students to secure entry level skills in the occupation for which they are training. The curriculum shall conform to the requirements in the Program of Studies for Kentucky Schools, 704 KAR 3:303.

Section 8. Recognized vocational student organizations shall be an integral part of the instructional program provided and shall be supervised by qualified vocational education personnel. All students shall be provided an opportunity to participate in leadership development activities.

Section 9. Instructional and administrative personnel shall meet the teacher certification requirements as specified by the Education Professional Standards Board.

Section 10. An annual plan for each school year along with an application for funds shall be submitted by each eligible recipient annually. This shall be submitted directly to the Department of Education for review and approval.

Section 11. Each vocational program area shall have an active program advisory committee to assist in planning, implementing, and evaluating programs.

Section 12. Requests for exceptions to any standards for vocational instructional programs shall be submitted in writing by the local educational agency to the chief state school officer. Exceptions shall be limited to experimental programs, innovative programs, and unusual cases and shall be approved on an individual and annual basis.

Section 13. (1) The maximum number of students per class shall be based on the class setting. For a classroom setting, the maximum enrollment shall be thirty-one (31); for a laboratory or shop setting, the maximum enrollment shall be twenty-seven (27). The number of students enrolled in a class cannot exceed the number of work stations available in the facility. For a supervised out-of-school setting, the maximum enrollment shall be twenty-seven (27). Approval by the chief state school officer is required for justification of exceptions, and such shall be granted only for good cause shown.
(2) There shall be at least one (1) class period for supervision of cooperative vocational education work experience program. Additional periods for supervision may be justified based on the number of students enrolled in the program. Each participating student shall have a training agreement and training plan between school, student, and employer.
(3) Each program shall provide classrooms, laboratories, and other facilities including instructional equipment, supplies, teaching aids, and other materials in sufficient quantity and quality to meet the objectives of the vocational instruction. Equipment used in vocational education programs shall be similar to that used in business and industry. An inventory of all equipment with an original purchase price of $300 or more shall be maintained by the local school district. The facilities for each program shall be of adequate size to accommodate the activities and the number of work stations unique to the program. The facility shall be approved by the chief state school officer.

Section 14. Each vocational program shall be evaluated annually in accordance with the requirements of the Carl Perkins Vocational and Applied Technology Education Act, Core Standards and Measures, 20 USC 2301 to 2471, the Department of Technical Education, the local education agency, and the Kentucky Department of Education. The evaluation shall be used to determine the effectiveness of the program in terms of its objectives and shall include annual follow-up data as well as annual enrollment reports. An audit of the utilization of federal and state funds shall be conducted by the Division of Secondary Vocational Education or Department of Technical Education to assure that such are meeting the requirements for each approved vocational education program.

Section 15. Programs offered by any eligible recipient of federal funds shall be disapproved for the federal funds if program requirements and provisions of the Kentucky State Plan for Vocational Technical Education are not met.

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: May 13, 1994

FILED WITH LRC: May 13, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 24, 1994, 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 Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Rodney Kelly

(1) Type and number of entities affected: Local school districts - 176; state-operated area vocational centers - 54.

(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 effect upon competition): N/A

(b) Reporting and paperwork requirements: Annual plan for vocational education. Vocational education student enrollment information.

(2) Effects on the promulgating administrative body: This regulation is necessary to establish general standards for secondary vocational programs in order to meet the requirements of the Carl D. Perkins Vocational and Applied Technology Act.

(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: Annual plan for vocational education. Vocational education student enrollment information.

(3) Assessment of anticipated effect on state and local revenues: This regulation is necessary in order for Kentucky to continue to receive federal funds to support vocational education.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: N/A

(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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 school districts and 54 area vocational centers.

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

904 KAR 3:041. Food Stamp Employment and Training Program.

RELATES TO: KRS 194.050, 7 CFR 273.7

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Employment and Training (ET) Program. 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 technical eligibility requirements used by the cabinet in the administration of the Food Stamp ET Program.

Section 1. Definitions. (1) "Conciliation" means a fifteen (15) day period that is used to determine why noncompliance with ET requirements occurred.

(2) "Exempt" means an individual who is excused by the agency from participation in the employment and training program.

(3) "Primary wage earner (PWE)" means the household member providing the most earned income in the prior two (2) months.

Section 2. Work Registration. (1) Except those meeting exempt criteria in subsection (4) of this section, all household members shall be required to register for work:

(a) At the initial application for food stamps; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by:

(a) The member required to register; or

(b) The person making application for the household.

(3) Unless otherwise exempt, persons who are excluded household members of the food stamp case, shall be required to register for work during periods of disqualification. These individuals are:

(a) Ineligible aliens;

(b) Individuals disqualified for refusing to provide or apply for a Social Security number; and

(c) Individuals disqualified for intentional program violation.

(4) The following shall be exempt from work registration requirements:

(a) A person younger than sixteen (16) years of age or a person sixty (60) years of age or older;

(b) A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis;

(c) A person who is physically or mentally disabled;

(d) A household member subject to and complying with any work requirement in the AFDC Program;

(e) A parent or other household member who is responsible for the care of:

1. A dependent child under age six (6); or

2. An incapacitated person;

(f) A person who receives unemployment compensation or a person who has applied for, but has not yet begun to receive, unemployment compensation if that person was required to register for work with the Department for Employment Services as part of the unemployment compensation application process;

(g) A regular participant in a substance abuse or alcohol treatment and rehabilitation program;

(h) A person who is employed or self-employed and:

1. Working a minimum of thirty (30) hours weekly; or

2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

(i) A migrant or seasonal farm worker who:

1. Meets the criteria in paragraph (h) of this subsection; and

2. Is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

(j) A student enrolled at least half time in any recognized school, training program, or institution of higher education, provided that those meeting student status have met the eligibility conditions in 904 KAR 3:025, Section 3.

(5) A household member who loses exemption status due to a change in circumstances shall work register:

(a) When the change is reported; or

(b) At the household's next recertification depending on what the change in circumstance involves.

(6) All nonexempt household members shall be subject to the following work requirements:

(a) Keep the initial assessment interview;

(b) Provide requested verification by mail or in person;

(c) Participate in an ET program if assigned;

(d) Respond to any request for additional information regarding employment status or availability for work;

(e) Report to an employer if referred by the ET worker or designee provided that the potential employment is not unsuitable as designated in Section 7 of this administrative regulation; and

(f) Accept a bona fide offer of suitable employment at a wage not less than state or federal minimum wage.

(7) Household members who are exempt or those completing the work registration requirements may volunteer to participate in the ET program.

(8) The ET worker shall explain to the food stamp applicant:

(a) The work requirements for each nonexempt household member;

(b) The rights and responsibilities of the work registered household members; and

(c) The consequences of failing to comply.

(9) Each household member required to register shall be notified in writing of the requirements in subsection (6) of this section.

Section 3. Employment and Training Participation. (1) Work registrants who reside in a county which offers a Food Stamp Employment and Training Program shall be required to participate in the Food Stamp Employment and Training Program based on priority status.

(2) Priority status shall be determined if the work registrant:

1. Has no high school diploma or GED;

2. Has no employment in the last twelve (12) months; or

3. Is a veteran.

(3) ET participants shall:

(a) Be placed in education, skills training or job search activities;

(b) Be reimbursed for miscellaneous and dependent care expenses, if otherwise eligible, up to:

1. $160 per dependent per month for incurred child care expenses; and

2. Twenty-five (25) dollars a month for miscellaneous expenses incurred while participating in the ET Program.

(4) Those participants who do not meet the criteria in subsection (2) of this section may or may not be selected to participate in an ET component.

Section 4. Components. All counties offering the Employment and Training Program shall offer the following services and activities:

(1) Educational components shall be:

(a) Literacy programs;

(b) Adult basic education (ABE);

(c) General equivalency diploma (GED); and

(d) Community college.

(2) Skills training components shall be:

(a) Vocational school;

(b) On-the-job training; and

(c) Kentucky Domestic Violence Association (KDVA).

(3) Job search components shall be:

(a) Job seeking skills training;

(b) Group job search; and

(c) Individual job search.

Section 5. Conciliation. (1) When an ET participant fails to comply with ET program requirements, a conciliation period is initiated.

(2) Conciliation is used to:

(a) Determine the reason for the noncompliance; and

(b) Allow the participant the opportunity to resolve the problem in order to continue participation.

(3) Conciliation lasts for fifteen (15) days and in that time the ET worker shall:

(a) Determine good cause for noncompliance; or

(b) Encourage the participant to resume ET activity; or

(c) Recommend disqualification for failure to comply with program requirements.

(4) If the participant resumes ET activity, no further action is required toward applying a sanction.

(5) If conciliation is unsuccessful and the participant does not provide good cause or refuses to comply, a disqualification is imposed.

Section 6. Determining Good Cause. (1) Good cause shall be determined in instances where the work registrant has failed to comply with:

(a) Work registration requirements as specified in Section 1 of this administrative regulation;

(b) Employment and training requirements as specified in Section 3 of this administrative regulation; or

(c) Voluntary quit requirements as specified in Section 9 of this administrative regulation.

(2) Good cause for failing to meet work registration and employment and training requirements shall include circumstances beyond the control of the registrant including:

(a) Illness;

(b) Illness of another household member requiring the presence of the registrant;

(c) A household emergency;

(d) Unavailability of transportation; and

(e) Inadequate child care for children who have reached age six (6) but are under age twelve (12).

Section 7. Sanctions in the ET Program. (1) Disqualifications are

imposed as follows:

(a) If the non-PWE fails to comply with ET, the individual is ineligible to receive food stamp benefits for two (2) months;

(b) If the PWE fails to comply with ETP, the entire household is ineligible to receive food stamp benefits for two (2) months.

(2) If a disqualification is imposed, the disqualified member must make reapplication for food stamps or request that the member be added to an active food stamp case to initiate a cure for noncompliance.

(3) Ineligibility as outlined in subsections (1) and (2) of this section continues until the ineligible member:

(a) Leaves the household;

(b) Becomes exempt from work registration;

(c) Complies with the work registration requirements; or

(d) The two (2) month disqualification period expires, whichever occurs first.

(4) If an ineligible household member joins a new household and:

(a) Is the primary wage earner, the entire new household then becomes ineligible for the remainder of the disqualification period; or

(b) Is not the primary wage earner, only he remains ineligible for the remainder of the disqualification period.

Section 8. Unsuitable Employment. Employment shall be considered unsuitable by the agency if:

(1) The wage offered is less than the highest of the following:

(a) The applicable federal minimum wage;

(b) The applicable state minimum wage; or

(c) Eighty (80) percent of the federal minimum wage if neither the federal nor state minimum wage is applicable.

(2) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wage specified in subsection (1) of this section.

(3) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(4) The work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 USC 178 and 45 USC 152.

(5) In addition, employment is considered unsuitable if the household member involved can demonstrate or the worker otherwise becomes aware that:

(a) The degree of risk to health and safety is unreasonable;

(b) The member is physically or mentally unsuited to perform the employment. This must be documented by medical evidence or by reliable information from other sources;

(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience;

(d) Daily commuting time exceeds two (2) hours a day, not including transporting a child to and from a child care facility;

(e) The distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site; or

(f) The working hours or nature of the employment interferes with the member's religious observances, convictions or beliefs.

Section 9. Voluntary Quit. (1) A head of household who voluntarily quits a job of twenty (20) hours or more a week without good cause sixty (60) days or less prior to the date of food stamp application shall not be eligible to participate in the program.

(2) The disqualification period for voluntary quit shall be:

(a) Ninety (90) days from the date of quit if the individual is an applicant; and

(b) Ninety (90) days beginning with the first of the month after all normal procedures for taking adverse action have been taken if the individual is in an active food stamp case.

(3) Good cause for leaving employment includes criteria in Section 5 of this administrative regulation and the following:

(a) Discrimination by the employer based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;

(b) Work demands or conditions that render continued employment unreasonable, such as working without being paid on time;

(c) Acceptance of employment by the head of household, or enrollment of at least half time in any recognized school, training program or institution of higher education, that requires the head of household to leave employment;

(d) Acceptance of employment by any other household member or enrollment at least half time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the head of household to leave employment;

(e) Resignations of persons under age sixty (60) which are recognized by the employer as retirement;

(f) Employment which becomes unsuitable by not meeting criteria in Section 8 of this administrative regulation after the acceptance of the employment;

(g) Acceptance of a bona fide offer of employment of more than twenty (20) hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours which, because of circumstances beyond the control of the primary wage earner, subsequently either does not materialize or results in employment of less than twenty (20) hours a week or weekly earnings of less than the federal minimum wage multiplied by twenty (20) hours; and

(h) Leaving a job in connection with patterns of employment in which workers frequently move from one (1) employer to another such as migrant farm labor or construction work.

(4) Good cause for voluntary quit shall be verified if questionable.

Section 10. Curing Sanction for Voluntary Quit. (1) A household may begin participation in the Food Stamp Program following the voluntary quit disqualification period if it applies again and is determined eligible.

(2) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be allowed to resume participation if the member who caused the disqualification:

(a) Secures new employment which is comparable in salary or hours to the job which was quit; or

(b) Leaves the household.

(3) A work registrant who:

(a) Is required to participate in the:

1. Food Stamp Employment and Training Program; or

2. Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS) Program as specified in 904 KAR 2:006 and 904 KAR 2:370; and

(b) Fails to participate shall be ineligible to receive food stamp benefits for two (2) months unless:

1. Good cause exists;

2. The noncompliant individual was participating in a JOBS component which is more stringent than the components of the ET Program; or

3. The noncompliant JOBS participant is otherwise exempt from work registration in the ET Program.

(c) An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in paragraph (b)2 of this subsection shall be work registered in the ET Program unless otherwise exempt by subsection (2) of this section.

Section 11. Hearing Process. Work registrants shall have the same opportunity to request a hearing as specified in 904 KAR 3:070.

Section 12. Replacements for employment and training reimbursement checks that are lost or stolen shall be made by completing appropriate forms.

Section 13. Material Incorporated by Reference. (1) Forms necessary for participation in the Food Stamp Employment and Training Program are being incorporated effective January 1, 1994. These forms include:

(a) ET-101, revised 7/93;
(b) ET-102, revised 8/93;
(c) ET-102 Supplement A, revised 12/91;
(d) J/ET-108, revised 9/91;
(e) ET-111, revised 7/93;
(f) ET-112, revised 10/90;
(g) ET-114, revised 12/91;
(h) ET-116, revised 12/93.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: March 1, 1994
FILED WITH LRC: May 9, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 1994 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. 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

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: This regulation removes partial information from another administrative regulation, 904 KAR 3:025, to create this new regulation. The relocation of this information will have no effect on Food Stamp applicants or recipients.

(a) Direct and indirect cost or savings to those affected: None
1. First year: None
2. Continuing cost or savings: None
3. Additional factors increasing or decreasing cost (Note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect cost or savings: None
1. First year: None
2. Continuing cost 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 governmental policy which may be in conflict, overlappinq, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None

Tiering. Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 273.7
2. State compliance standards. This regulation pertains to technical requirements for the Food Stamp Employment and Training Program as specified by the Food and Nutrition Service. There are no differing state compliance standards.
3. Minimum or uniform standards contained in the Federal mandate. The mandate requires states to operate an employment and training program to assist able bodied food stamp recipients in obtaining employment.
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 standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:023. Review and approval of oxygen and selected therapies in nursing facilities.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.520, 44 CFR 430, 431, 432, 433, 435, 440, 442, 447, 455, 456, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. 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 administration regulation sets forth provisions relating to review and approval of oxygen and selected therapies for Medicaid recipients in nursing facilities.

Section 1. Coverage of Oxygen. The Medicaid review agency shall determine medical necessity for the use of oxygen in nursing facilities in accordance with criteria shown in the Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual.

Section 2. Coverage of Selected Therapies as Ancillary Services. The Medicaid review agency shall determine whether respiratory, occupational, speech, and physical therapy, when ordered by a physician for a Medicaid patient in a Medicaid participating nursing facility, meets program criteria to be billed as an ancillary service using criteria shown in the Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual.

Section 3. Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual. The Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual, dated May 1, 1994, incorporated by reference in this administrative

regulation, specifies the review and approval criteria for determinations of medical necessity for oxygen; the criteria for billing specified therapies as an ancillary service in a nursing facility; and the appeals process for the medical necessity decisions made by the review agency. The Review and Approval of Oxygen and Selected Therapies in Nursing Facilities Manual 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 4. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after May 1, 1994.

MASTEN CHILDERS II, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: April 28, 1994
FILED WITH LRC: April 29, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 1994 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 1994 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. 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

Agency Contact Person: Masten Childers II

(1) Type and number of entities affected: All nursing facilities participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost or savings:

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $10 million savings.

2. Continuing costs or savings: $10 million 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 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 Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set 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. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the May 2, 1994 Meeting

The May meeting of the Administrative Regulation Review Subcommittee was held on Monday, May 2, 1994 10 a.m. in Room 131 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the April 15, 1994 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Tom Smith, Gene Huff; Representatives Jim Bruce, Woody Allen and James Yates.

Guests: George Russell, Anita Stanley, Registry of Election Finance; Paul D. Jones, Jennifer Hays, Elwood Harris, Revenue Cabinet; L. Wayne Tune, Board of Architects; Commissioner Tom Bennett, Jeffery Sole, Department of Fish and Wildlife; Rob Daniell, Doyle Mills, Linda Stacy, James Hale, Pat Haight, Bob Logan, Natural Resources and Environmental Protection Cabinet; Louis Smith, Brenda Priestly, Department of Corrections; Greg Dringenburg, Sandra Pullen, Department of Transportation; Kevin Noland, Department of Education; Akeel Zaheer, Education Professional Standards Board; R.C. Story, Reecie Stagnolia, Workforce Development Cabinet; Joyce Bryant, Carla H. Montgomery, Sharron S. Burton, Department of Insurance; Jules W. Delambre, Eric Friedlander, Bess Howard, Karen Doyle, Frank Kirk, Michael Cheek, Larry D. Taylor, Robert P. McWilliams, Thelma Cornett, Larry W. Moore, Cabinet for Human Resources; Scott Adams, WFKY; Charles Wolfe, Associated Press; Kay Sharon, Hardin County Board of Education; Luther Herrong, guest of Senator Tom Smith.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines.

The Subcommittee determined that the following administrative regulations, as amended, complied with statutory requirements:

Registry of Election Finance: Practice and Procedure

32 KAR 2:170. In-kind contributions. This administrative regulation was amended as follows: (1) a new Section 1(1) was added to cross-reference the definition of "in-kind contribution" in KRS 121.015(6)(b),(c), and 121A.010(11)(a)(3) and (4); (2) Section 1(2) was deleted in its entirety because it established a definition for a term already defined by statute; (3) Section 1(5) was amended by deleting the first sentence; and (4) Section 3 was deleted because it inappropriately related to independent expenditures in this administrative regulation, the subject matter of which is limited to in-kind contributions.

32 KAR 2:190. Committee affiliation. Section 2 of this administrative regulation was amended to insert the correct statutory citation.

32 KAR 2:200. Allowable campaign expenditures. In response to a question from Representative Bruce, agency personnel stated that the amendments to this administrative regulation reflect legislation enacted during the 1994 Regular Session. Section 1(7) was amended to remove the $5 per person limit on the value of a dinner; Section 1(8) was amended to remove language that made a distinction between expenditures made during an election year and those made in an off election year; and Section 2(3) was deleted in its entirety to permit the purchase of gifts such as food or flowers for campaign workers and volunteers.

In response to a question from Representative Yates, agency personnel stated that the statute prohibits the purchase of anything that would provide a private pecuniary benefit to an individual, and the statute would prohibit using campaign funds to purchase something for an individual who was not a campaign or precinct workers.

Revenue Cabinet: Income Tax; Corporations

103 KAR 16:145. Apportionment and allocation; barge line companies. This administrative regulation was amended in Section 2 and 3 to correct statutory citations. Three references to KRS 141.010 were amended to correct the cite to KRS 141.120.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game. This administrative regulation was amended in Section 2(4) to insert "At sunset" at the beginning of the sentence to specify that the hunting and trapping season for furbearers would begin at sunset the day after the modern gun season.

Department of Corrections: Office of the Secretary

501 KAR 6:130. Western Kentucky Correctional Complex. This administrative regulation was amended to: (1) Cite KRS 217.280-217.390 in the statutory reference section of policy WKCC 11-00-03; (2) Change "inmates" to "An inmate" in policy WKCC 23-00-01; and (3) correct the punctuation in policy WKCC 20-01-01 and policy WKCC 20-00-01.

501 KAR 6:140. Bell County Forestry Camp. Policy BCFC 08-10-01 was amended to: (1) change "must", "will" and "should" to "shall, pursuant to KRS 13A.222(4)(b); (2) correct punctuation; and (3) spell out chemical agents as well as use abbreviations for those agents.

In response to a question by Representative Yates, Cabinet personnel stated that inmates were not furnished televisions, but there were recreation rooms where inmates can watch television.

Transportation Cabinet: Office of Minority Affairs

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises. This administrative regulation was amended to adopt the April 22, 1994 edition of 13 CFR 121.101-121.601.

Cabinet for Human Resources: Administration

900 KAR 1:080. Standards governing scientific misconduct. Section 3 of this administrative regulation was amended to comply with KRS 13A.222(4) drafting requirements, and in Section 3(11)(a) a typographical error was corrected.

Department for Employment Services: Unemployment Insurance

903 KAR 5:300. Required reports and due dates. The STATUTORY AUTHORITY section of this administrative regulation was amended pursuant to KRS 13A.220(3)(e) to delete the reference to KRS Chapter 13A.100 as one of the statutes authorizing the promulgation of the proposed administrative regulation; and Section 2(1) was amended to comply with drafting requirements of KRS 13A.222(4).

Department for Social Insurance: Public Assistance

904 KAR 2:370. Technical requirements; job opportunities and basic skills. Section 10(2)(c) of this administrative regulation was amended to delete the words "sanctioned individual and the"; and in Section 10(2)(c)1. to insert "and (6)" before "(9)".

In response to a question by Chairman Kerr, agency personnel stated that: (1) this administrative regulation requires at least one parent to participate in the Job Opportunities and Basic Skills (JOBS) program; (2) if that parent fails to comply with the program requirements, the other parent would be required to participate; and (3). If the other parent did not participate, both parents would be sanctioned.

In response to a question by Representative Jim Yates, agency personnel stated that: (1) a grant was based on the number of people

in the household; (2) if one parent did not participate in the program, his need were subtracted from the grant which resulted in a reduction of the amount of assistance.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Registry of Election Finance: Practice and Procedure

32 KAR 2:180. Extension of credit to candidates, campaign committees, or political issues committee.

Revenue Cabinet: Income Tax; General Administration

103 KAR 15:040. Statute of limitations; assessments and refunds.

Income Tax; Corporations

103 KAR 16:010. Taxable income; coal royalty.

103 KAR 16:100. Apportionment and allocation; telephone and telegraph companies.

103 KAR 16:110. Apportionment and allocation; pipeline companies.

103 KAR 16:120. Apportionment and allocation; trucklines, buslines; airlines.

103 KAR 16:130. Apportionment and allocation; railroad companies.

103 KAR 16:150. Apportionment and allocation; loan companies.

Income Tax; Individual

103 KAR 17:060. Income subject to taxation; portions.

Board of Examiners and Registration of Architects

201 KAR 19:035. Qualifications for examination.

201 KAR 19:095. Professional practice standards; violations, penalties.

201 KAR 19:100. Individual seals; office titles.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:041. Shooting preserves and foxhound training enclosures. Representative Allen asked for an explanation of this administrative regulation. Commissioner Tom Bennett stated that it was lowering the number of minimum members required for a shooting preserve from 120 to 20 and was raising the maximum size from 1500 acres to 2000 acres. Representative Allen asked why they would object to 5000 acres. Commissioner Bennett said the Department was concerned that that would limit public access. Representative Allen said that if it were private land, could the land owner not just fence it off? Commissioner Bennett replied that the reality of someone doing that is remote. He added that they are trying to prohibit dozens of these in one particular area. Concerning the fencing off of private land he stated that there is nothing to stop you, but if it is a shooting preserve, historically the Department has regulated those.

301 KAR 2:049. Seasons for furbearers and small game on specified areas.

301 KAR 2:081. Pet and propagation permits. Chairman Kerr noted that the Department exempts reptiles and primates from the definition of "wildlife" and asked why. Commissioner Bennett replied that historically the Department has not regulated "pet shop" type animals. Chairman Kerr then referred to the pet and propagation permit and asked if it was provided for in another administrative regulation. Commissioner Bennett said yes and added that the Appropriations and Revenue Committee had been concerned that the fees were too high. Jeff Sole of the Department stated that the non commercial permit was three years for $75 and the commercial permit was one year for $200. Commissioner Bennett stated the Department is reviewing this fee structure and will also cross reference the administrative regulations. Chairman Kerr noted that some animals are prohibited for importation or possession but that the Commissioner may approve exceptions for certain educational scientific or research purposes. He asked if there were any standards and if so is this done by administrative regulation. Commissioner Bennett said that it was done on a case by case basis of receiving a request by letter and with the Department responding by letter. Chairman Kerr advised the Department of the need to work on this and have standards so that it won't be arbitrary. Commissioner Bennett agreed.

Senator Smith asked Commissioner Bennett if he knew anything about any reptile being considered as an endangered species, and if the U.S. Fish and Wildlife was behind this? Commissioner Bennett replied that the copper bellied water snake is the snake in question, and that he has asked for data on this species. Senator Smith replied that the Commissioner could get data from field officers. Reference was made that this particular snake is abundant in many areas. Senator Smith said at this point, to find this snake an endangered species, without proper data would be deplorable. Commissioner Bennett said that he was trying to get additional information.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Underground Storage Tanks

COMPILER'S NOTE: See discussion of these emergency administrative regulations under section on administrative regulations deferred.

401 KAR 42:060E. Release response and corrective action for UST systems containing petroleum or hazardous substances.

401 KAR 42:070E. Out-of-service UST systems and closure.

401 KAR 42:080E. Classification of petroleum underground storage tank systems and listing of associated cleanup levels.

Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:040. Kentucky State Penitentiary.

Transportation cabinet: Office of Minority Affairs

600 KAR 4:020. The disadvantaged, minority and women business enterprise program.

Department of Vehicle Regulation: Motor Vehicle Tax

601 KAR 9:160. Surrendered title of a vehicle. In response to a question by Representative Yates, agency personnel stated that: (1) when a title is surrendered, the vehicle may only be used for parts and may not be placed on the road again; (2) if the wrong title is surrendered, that title must be reactivated and the correct title surrendered; and (3) this administrative regulation allows the reactivation of a surrendered title.

In response to a question from Representative Yates, agency personnel responded that: (1) when a vehicle is "junked", the owner must turn in the license receipt and the title; (2) no taxes are paid when a vehicle is "junked"; (3) people surrender titles to vehicles so they will not be required to pay the ad valorem taxes; (3) a person can buy a "junked" car for parts only; and (4) if a person wanted to put a car on the road again they should have obtained a salvage title.

Representative Allen stated that he has received complaints from his constituents about the valuation of motor vehicles by the county clerks when a car is registered.

Representative Kerr responded that the Revenue Cabinet: (1) establishes the valuation of motor vehicles for imposition of the ad valorem tax; (2) has changed its policy on valuation of motor vehicles; (3) appears to be implementing its policy without an administrative regulation; and (4) along with other agencies, will be asked to attend the June 1994 meeting of the Subcommittee to explain the use of policy or other forms of action that are not set out, or incorporated by reference, in an administrative regulation.

Commercial Driver's License

601 KAR 11:080. Limited commercial driver's license for farm-related service industries. In response to a question by Representative Yates, agency personnel stated that: (1) fertilizer spreaders and migrant workers do not want a full-time commercial drivers license (CDL); (2) this administrative regulation allows them to apply for a

CDL on a seasonal basis; and (3) the federal government permits this type of limited CDL.

In response to a question by Senator Huff, agency personnel stated that: (1) the federal government has restricted CDLs to farm related services; (2) church bus drivers must obtain a CDL to operate a church bus; and (3) the CDL authorized in this administrative regulation is limited to farm activity.

Department of Education: School Administration and Finance

702 KAR 3:265. Repeal of 702 KAR 3:230, Vocational allocation of add-on SEEK funds.

Education Professional Standards Board

704 KAR 20:245. Provisional certificate for teachers of exceptional children - trainable mentally handicapped.

704 KAR 20:250. Severely/profoundly handicapped; teaching endorsement.

704 KAR 20:380. Certification for early elementary school principal, grades K-4.

704 KAR 20:390. Certification for middle grade school principal, grades 5-8.

704 KAR 20:400. Certification for secondary school principal grades 9-12.

704 KAR 20:410. Certification for supervisor of instruction, grades K-12.

704 KAR 20:420. Certification for school superintendent.

Workforce Development Cabinet: Department for Adult and Technical Education: Adult Education

780 KAR 9:040. Approval of federal grands under the Adult Education Act as amended by the National Literacy Act of 1991, 20 USC § 1201 et seq.

Department of Insurance: Health Maintenance Organizations

806 KAR 38:020. Health maintenance organization agent license.

Prepaid Dental Plan Organization

806 KAR 43:010. Prepaid dental plan organization agent license.

Cabinet for Human Resources: Department for Employment Services: Unemployment Insurance

903 KAR 5:290. Employer contribution rates.

903 KAR 5:391. Repeal of 903 KAR 5:390.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were withdrawn by the promulgating agency:

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Underground Storage Tanks

In response to a question from the Cabinet, Chairman Kerr gave agency personnel a letter stating that: (1) Section 2(5) of House Bill 481, enacted during the 1994 Regular Session, provided that emergency administrative regulations filed by the Cabinet in February 1994 shall remain in effect until administrative regulations required by Section 2(3) were adopted; (2) withdrawal of the ordinary administrative regulations 401 KAR 42:060, 401 KAR 42:070, and 401 KAR 42:080, would not result in the expiration of the counterpart emergency administrative regulations under KRS 13A.190(10)(b) because House Bill 481 contemplated that the emergencies would remain in effect until new ordinaries had become effective; and (3) questions relating to administrative regulations before the Subcommittee, and to the implementation of KRS Chapter 13A, should be addressed to the Subcommittee.

The Cabinet withdrew these three ordinary administrative regulations at today's meeting, and the review by the Subcommittee was limited to the counterpart emergency administrative regulations.

In response to questions by Subcommittee members, the Regulations Compiler and Subcommittee staff stated that the changes made due to the public hearing would not be in effect because these changes are not reflected in the emergency administrative regulations.

401 KAR 42:060. Release response and corrective action for UST systems containing petroleum or hazardous substances. Representative Jim Bruce stated that an elderly constituent in his district informed him that she was afraid she would be arrested by the Cabinet for failure to remove her underground storage tank which had not been used in over ten years.

Agency personnel stated that: (1) they were not aware of this situation; (2) since only civil penalties are provided for under the statute, it was impossible for criminal action to be taken against someone who violates the statute; (3) if Representative Bruce would provide the name of the constituent, they would determine the tank classification and advise the constituent of action required under the emergency administrative regulations relating to closure or removal.

Agency personnel confirmed Senator Smith's statement that a study conducted by the University of Kentucky, relating to underground storage tanks, recommended that a tank that had been empty for a number of years not be removed. Senator Smith added that people in the position of Representative Bruce's constituent may not be required to remove the tank.

401 KAR 42:070. Out-of-service UST systems and closure. In response to a question by Senator Smith, agency personnel stated that: (1) numerous comments were received concerning improvement of the guidelines incorporated by reference in this administrative regulation; (2) the Cabinet plans to: (a) clarify much of the substance of these guidelines, as well as guidelines incorporated by reference in 401 KAR 42:060. and 401 KAR 42:080, in the final administrative regulations; and (b) propose final administrative regulations pursuant to HB 481, after the University of Kentucky completes its study, and adds diesel and waste oil constituents to its findings.

Agency personnel stated that, at the Cabinet's public hearing, the interpretation of guidelines adopted by reference in 401 KAR 42:070 had been explained. Questions were raised concerning the use of clarifications or interpretations of guidelines. Subcommittee staff pointed out that if an item was not set out, or incorporated by reference, in an administrative regulation, it could not be used or implemented. Agency personnel stated that the Cabinet would not use any item not incorporated by reference or set out in an administrative regulation.

401 KAR 42:080. Classification of petroleum underground storage tank systems and listing of associated cleanup levels.

The following administrative regulations were deferred to the June meeting, unless otherwise noted, upon request by the Subcommittee and agreed to by the promulgating agency:

Revenue Cabinet: Income Tax; Withholding

103 KAR 18:120. Security for compliance; bonds. It was noted that Section 2 and 3 contained definitions in violation of the drafting requirements of KRS Chapter 13A, and furthermore that the definitions of these words appear in the statute. Chairman Kerr then asked if the definitions were in the federal statutes or the Kentucky statutes. It was pointed out that they were in KRS 141.010. Agency personnel requested deferral to correct drafting problems.

OTHER BUSINESS:

Fish and Wildlife Resources - 301 KAR 3:030

Chairman Kerr stated that the February minutes and the Report to LRC failed to reflect that the Subcommittee had approved a motion to approve the finding of deficiency on 301 KAR 3:030, as well as 301 KAR 2:260, relating to crow depredation. The Subcommittee approved

a motion to correct the minutes and the Report.

Natural Resources and Environmental Protection Cabinet

Regulations dealing with archaeological surveys of landfills (401 KAR 4:220, 47:170, and 410 KAR 1:010) Agency personnel stated that they had met with state historical preservation agency personnel who agreed that the Cabinet would propose changes to the solid waste package to make it identical to federal requirements. The state historical preservation agency would conduct the preliminary survey currently done by an applicant for a contained landfill; the Cabinet would make the results of the survey available to the state historical preservation agency; the applicant would have to comply with that agency's requirements; and the role of the Cabinet would be limited to a coordinating agency rather than reviewing matters for which it does not have the required expertise.

Agency personnel stated that this change would be accomplished as part of changes in solid waste administrative regulations to which the Cabinet had agreed during the 1994 Regular Session, and which must be completed by October, 1994, in order to retain federal authorization to run the solid waste program.

In response to a question by Senator Smith, agency personnel stated that CMD and residual landfills would be similarly treated, and that administrative regulations containing requirements more stringent than the federal requirements would be amended.

Chairman Kerr requested and agency personnel agreed to contact Subcommittee staff prior to filing the discussed changes so that Subcommittee staff could review proposed changes.

Cabinet for Human Resources: Department for Social Services: Day Care

905 KAR 2:110. Child care facility provider requirements.

905 KAR 2:120. Child care facility health and safety standards.

Senator Tom Smith stated that: (1) school-age child care programs represent unique concerns that should be regulated separately from programs that are not affiliated with or held in public school facilities; and (2) the records requirements found in 905 KAR 2:110, Section 2(1), pose unnecessary problems for school-sponsored programs.

Senator Smith questioned the requirement that a school-age child care program keep immunization records in its own file cabinet, when the same records were retained in the same building, and in many cases, just down the hallway in the school's central file. Agency personnel stated that: (1) immunization records are required to be kept "in the facility"; (2) when a program is in a school, it was necessary to have records in the program's file for the program's staff and for the state surveyors for inspection; and (3) if records are located in another building, they would not be readily accessible to the state surveyors. Senator Smith stated that these programs should be regulated with good judgment and common sense, and not in a manner that requires duplication of records.

In response to a question by Senator Smith, relating to the requirement of 905 KAR 2:120, Section 5(1)(c), mandating screens on windows, agency personnel stated that only facilities which leave unscreened windows open would be found to be in noncompliance as this requirement is for health reasons.

Senator Smith requested the Cabinet to review regulatory requirements for school-age child care programs. Agency personnel agreed to review the programs and stated that the Cabinet: (1) is acting on a recommendation made by the Child Care Policy Council to study the need for changes in current policies regarding before and after school child care programs; (2) plans to discuss these issues with the Department of Education, providers, parents and Council representatives; and (3) will promulgate administrative regulations specifically relating to school-age child care programs after a court decision on a case concerning whether YMCAs should be regulated as a day care of a day camp.

In response to a question by Kay Sharon, Hardin County Board of Education School Age Child Care Programs, agency personnel stated that: (1) YMCA programs are a vital part of the school-age child care issue; and (2) resolution of the YMCA case will determine whether the Cabinet will regulate these programs as they do school-age programs affiliated with public school facilities.

Senator Smith stated that: (1) many of the issues concerning school-age child care could be addressed without waiting for the results of the declaratory judgment; (2) he hoped new administrative regulations relating to school-age child care could be in place before the fall school year; (3) the day care administrative regulations will be reviewed again by the Subcommittee at its July 1994 meeting, and that the Cabinet report its progress in addressing these concerns.

The Subcommittee adjourned at 11:30 a.m. until June 1, 1994 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 LABOR AND INDUSTRY
Meeting of May 11, 1994

The Interim Joint Committee on Labor and Industry met on May 11, 1994, and took no action on the following administrative regulations:

Labor Cabinet

803 KAR 2:300	803 KAR 2:319	803 KAR 2:411
803 KAR 2:301	803 KAR 2:320	803 KAR 2:413
803 KAR 2:304	803 KAR 2:402	803 KAR 2:414
803 KAR 2:306	803 KAR 2:403	803 KAR 2:418
803 KAR 2:307	803 KAR 2:404	803 KAR 2:420
803 KAR 2:308	803 KAR 2:405	803 KAR 2:423
803 KAR 2:309	803 KAR 2:406	803 KAR 2:424
803 KAR 2:311	803 KAR 2:407	803 KAR 2:425
803 KAR 2:312	803 KAR 2:408	803 KAR 2:500
803 KAR 2:313	803 KAR 2:409	
803 KAR 2:317	803 KAR 2:410	

Cabinet for Human Resources: Department for Employment Services

903 KAR 5:250

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates L2

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 L19

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 L36

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	20 Ky.R Page No.	Effective Date
302 KAR 20:040E	2596	4-30-93
Expires		9-29-93
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

ORDINARY REGULATIONS:

Regulation Number	20 Ky.R Page No.	Effective Date
201 KAR 20:235	2755	(See Volume 20)
603 KAR 5:230		
Amended	2684	(See Volume 20)
704 KAR 7:120	2539	(See Volume 20)
704 KAR 20:120		
Amended	2316	6-7-93
707 KAR 1:061	2540	(See Volume 20)
707 KAR 1:160	2541	(See Volume 20)
707 KAR 1:170	2543	(See Volume 20)
707 KAR 1:180	2545	(See Volume 20)
707 KAR 1:190	2551	(See Volume 20)
707 KAR 1:200	2554	(See Volume 20)
707 KAR 1:210	2558	(See Volume 20)
707 KAR 1:220	2561	(See Volume 20)
707 KAR 1:230	2564	(See Volume 20)
707 KAR 1:240	2569	(See Volume 20)
707 KAR 1:250	2572	(See Volume 20)
707 KAR 1:260	2574	(See Volume 20)
803 KAR 2:310		
Amended	2736	(See Volume 20)
805 KAR 7:030		
Amended	2740	8-25-93
902 KAR 8:040	2760	(See Volume 20)
902 KAR 8:050	2761	(See Volume 20)
902 KAR 8:060	2763	(See Volume 20)
902 KAR 8:070	2765	(See Volume 20)
902 KAR 8:080	2768	(See Volume 20)
902 KAR 8:090	2770	(See Volume 20)
902 KAR 8:100	2771	(See Volume 20)
902 KAR 8:110	2773	9-3-93
902 KAR 8:120	2774	(See Volume 20)
902 KAR 8:130	2777	9-3-93
902 KAR 8:140	2778	9-3-93
902 KAR 20:004	659	
Amended	2745	(See Volume 20)
908 KAR 2:070	2779	(See Volume 20)

*Statement of Consideration Not Filed by Deadline; Regulation Expired (KRS 13A.280(2))

VOLUME 20

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

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2 KAR 2:010E	483	8-12-93
Replaced	668	10-13-93
Resubmitted	1756	12-6-93
Expired		2-4-94
Resubmitted	2528	2-15-94
Replaced	2654	5-18-94
2 KAR 2:020E	1756	12-6-93
Expired		2-4-94
Resubmitted	2528	2-15-94
Replaced	2745	5-18-94
2 KAR 2:030E	1756	12-6-93
Expired		2-4-94
Resubmitted	2528	2-15-94
Replaced	2972	5-18-94
9 KAR 1:040E	736	9-9-93
Replaced	1567	12-6-93
11 KAR 3:001E	915	10-4-93
Replaced	1777	1-10-94
12 KAR 1:115E	3166	5-13-94
12 KAR 1:120E	3166	5-13-94
12 KAR 1:125E	3166	5-13-94
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12 KAR 6:020E	3175	5-13-94
12 KAR 6:025E	3175	5-13-94
31 KAR 5:020E	736	9-15-93
Replaced	869	12-6-93
32 KAR 2:160E	1550	10-22-93
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101 KAR 2:100E	483	8-3-93
Replaced	1568	12-6-93
101 KAR 3:010E	488	8-3-93
Replaced	1573	12-6-93
201 KAR 20:240E	1551	10-22-93
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301 KAR 2:044E	492	7-30-93
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301 KAR 2:260E	494	7-30-93
Replaced	679	10-27-93
301 KAR 3:030E	494	7-30-93
Replaced	952	10-27-93
302 KAR 15:010E	4	5-18-93
Expired	1029	10-29-93
401 KAR 42:060E	2530	2-15-94
401 KAR 42:070E	2530	2-15-94
401 KAR 42:080E	2531	2-15-94
415 KAR 1:114E	2962	4-8-94
415 KAR 1:115E	495	8-13-93
Replaced	1615	12-17-93
501 KAR 6:020E	277	6-24-93
Resubmitted	1758	12-1-93
501 KAR 6:060E	1557	10-19-93
Replaced	1375	1-10-94
501 KAR 6:080E	1759	12-1-93
Replaced	2141	3-14-94
501 KAR 6:120E	1558	10-19-93
Replaced	1378	1-10-94
501 KAR 6:130E	2774	3-14-94
600 KAR 1:101E	3175	4-15-94
601 KAR 1:040E	1560	10-22-93
Replaced	1381	2-10-94
601 KAR 1:101E	1562	10-22-93
Replaced	2330	2-10-94
601 KAR 2:010E	1563	10-22-93
Replaced	1384	2-10-94
601 KAR 9:040E	1564	10-22-93
Replaced	1386	2-10-94
601 KAR 11:040E	228	6-16-93
Replaced	145	9-3-93
601 KAR 13:011E	3184	4-15-94
780 KAR 3:070E	918	9-21-93
Replaced	2336	2-2-94
780 KAR 6:060E	923	9-21-93
Replaced	2342	2-2-94
806 KAR 2:120E	8	6-15-93
Replaced	247	9-3-93
806 KAR 2:130E	8	6-15-93
Replaced	248	9-3-93
810 KAR 1:031E	496	7-20-93
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815 KAR 45:025E	2964	4-14-94
902 KAR 8:040E	9	5-19-93
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902 KAR 8:050E	10	5-19-93
Replaced	369	9-3-93
902 KAR 8:060E	11	5-19-93
Replaced	513	9-3-93
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902 KAR 8:120E	19	5-19-93
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902 KAR 8:130E	23	5-19-93
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902 KAR 8:140E	23	5-19-93
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902 KAR 13:090E	1760	12-2-93
Replaced	2641	3-14-94
902 KAR 20:004E	24	5-18-93
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Resubmitted	2965	3-28-94
Replaced	2786	4-11-94
902 KAR 50:031E	1766	12-2-93
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902 KAR 50:032E	1768	12-2-93
Replaced	2278	3-14-94
902 KAR 50:033E	1771	12-2-93
Replaced	2281	3-14-94
902 KAR 55:015E	502	7-20-93
Replaced	659	10-21-93
902 KAR 55:030E	1773	11-23-93
Replaced	1701	2-10-94
902 KAR 65:010E	737	9-1-91
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902 KAR 100:019E	2531	1-26-94
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902 KAR 100:021E	2582	1-26-94
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902 KAR 100:041E	2587	1-26-94
Replaced	2511	4-11-94
902 KAR 100:073E	2589	1-26-94
Replaced	2842	4-11-94
902 KAR 100:100E	2601	1-26-94
Replaced	2398	4-11-94
903 KAR 5:270E	280	6-16-93
Replaced	155	9-3-93
903 KAR 5:290E	2970	3-28-94
903 KAR 5:391E	2971	3-28-94
904 KAR 2:116E	1774	12-15-93
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905 KAR 1:010E	929	9-23-93
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905 KAR 2:001E	29	6-7-93
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905 KAR 2:011E	31	6-7-93
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905 KAR 2:090E	31	6-7-93
Replaced	805	10-13-93
905 KAR 2:100E	33	6-7-93
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905 KAR 2:110E	36	6-7-93
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905 KAR 2:120E	38	6-7-93
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905 KAR 2:130E	42	6-7-93
Replaced	816	10-13-93
907 KAR 1:013E	281	7-7-93
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907 KAR 1:017E	284	6-16-93
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907 KAR 1:022E	285	7-7-93
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907 KAR 1:023E	3185	4-29-94

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Replaced	447	10-13-93
907 KAR 1:044E	504	7-28-93
Replaced	663	10-21-93
907 KAR 1:045E	505	7-28-93
Replaced	664	10-21-93
907 KAR 1:150E	3186	4-28-94
907 KAR 1:470E	2610	1-27-94
Replaced	2453	4-11-94
907 KAR 1:472E	2611	1-27-94
Replaced	2454	4-11-94
907 KAR 1:536E	296	7-7-93
Replaced	572	10-13-93
907 KAR 1:625E	3187	4-25-94
907 KAR 1:630E	3188	4-25-94
908 KAR 2:060E	506	7-28-93
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2 KAR 1:020		
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2 KAR 2:010	668	10-13-93
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2 KAR 2:020	2267	
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Resubmitted	2745	
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9 KAR 1:040	868	
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11 KAR 3:001		
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11 KAR 10:010		
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11 KAR 10:020		
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12 KAR 1:010		
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12 KAR 1:025		
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12 KAR 1:055		
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12 KAR 1:060		
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12 KAR 1:065		
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12 KAR 1:075		
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30 KAR 1:050		
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102 KAR 1:035		
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103 KAR 15:040		
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103 KAR 16:010		
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103 KAR 16:150		
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103 KAR 17:060		
Amended	2879	
103 KAR 18:120		
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105 KAR 1:010		
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105 KAR 1:040		
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105 KAR 1:130		
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105 KAR 1:210		
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105 KAR 1:270		
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106 KAR 2:010	1427	
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201 KAR 12:055		
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201 KAR 12:085		
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201 KAR 12:110		
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201 KAR 26:230		
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Amended	1048	1-10-94
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Amended	2367	3-23-94
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