ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE: The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on July 1, 1994 at 10 a.m. See **tentative** agenda on pages 1-3 in this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - July 1, 1994 at 10 a.m.
Room 131, Capitol Annex

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12 KAR 1:120 & E. Noxious weed seed.
12 KAR 1:125 & E. Identification of seed not for sale.
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30 KAR 1:010. Certificates of existence or authorization; status of good standing.
30 KAR 1:020. Statements, reports and documents; filing requirements.
30 KAR 1:040. Indistinguishable names.
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201 KAR 1:045. Examination subjects, grading and reexamination.
201 KAR 1:050. Certificate application.
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201 KAR 1:065. Individual permit fees.
201 KAR 1:081. Firm permits to practice.
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Department of Fish and Wildlife Resources

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301 KAR 1:085. Mussel shell harvesting.

Game

301 KAR 2:111. Deer and turkey hunting on special areas.

Hunting and Fishing

301 KAR 3:025. License distribution and reporting.

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Department of Agriculture

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302 KAR 16:080. Qualifications and inspection criteria for bungee (bungy) jumping of similar apparatus permit. (Deferred from June)

Livestock Sanitation

302 KAR 20:220. Pseudorabies: eradication and control. (Deferred from June)

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Department for Environmental Protection

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401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.
401 KAR 5:037. Groundwater protection plans. (Public Hearing in May)
401 KAR 5:050. General provisions of KPDES permitting program.
401 KAR 5:055. Scope and applicability of the KPDES program.
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401 KAR 8:010. Definitions for Title 401 Chapter 8. (Not Amended After Hearing) (Deferred from June)
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401 KAR 8:100. Design, construction and approval of facilities. (Not Amended After Hearing) (Deferred from June)
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401 KAR 8:250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels. (Not Amended After Hearing) (Deferred from June)
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415 KAR 1:114 & E. Contractor certification. (Repeals 415 KAR 1:115) (Public Hearing in May)

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Learning Results Services

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703 KAR 4:100. Grade placement of assessment program components.

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Office of Instruction

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704 KAR 3:292. Chapter 1, ESSIA migrant education requirements.

704 KAR 3:401. Principal assessment centers.

704 KAR 3:406. Superintendent training program and assessment process.

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705 KAR 3:141. Area center of public high school, standards for vocational department.

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705 KAR 4:041. Cooperative program standards.

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780 KAR 1:010. 1995-96 program plan.

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904 KAR 3:025. Technical requirements.

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905 KAR 2:110. Child care facility provider requirements.

905 KAR 2:120. Child care facility health and safety standards.

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
405 KAR 7:080E

This administrative regulation specifies the assistance the Natural Resources and Environmental Protection Cabinet can provide to eligible small coal mine operators under the federally-funded Small Operator Assistance Program (SOAP), which was established by Section 507(c) of PL 95-87, the Surface Mining Control and Reclamation Act of 1977, and is further governed by federal regulations at 30 CFR Part 795. The present scope of assistance is limited to the determination of probable hydrologic consequences and closely related information.

This emergency administrative regulation enables the cabinet to offer Kentucky's small operators the significantly expanded scope of assistance authorized by the federal Energy Policy Act of 1992 (PL 102-486). The 1992 Act authorized SOAP programs to provide additional services including collection of site-specific information on fish and wildlife resources and preparation of protection and enhancement plans, collection of archaeological and historical information and preparation of related plans, preblasting surveys, and development of cross-section maps and plans required in permit applications. These additional services can save a small operator several thousand dollars in permitting costs.

The federal Office of Surface Mining Reclamation and Enforcement (OSM) has not yet amended its regulations to incorporate the small operator assistance provisions of the 1992 Act, a process that will take several months to complete. However, OSM has advised states that OSM will approve state program amendments consistent with the 1992 Act so states can proceed to offer the expanded services, recognizing that it may be necessary to amend the state regulations again after the federal regulations are amended. It is necessary to promulgate this emergency administrative regulation in order to make these important cost savings immediately available to Kentucky's small operators.

This emergency administrative regulation will be replaced by an ordinary administrative regulation, which was filed with the Regulations Compiler on May 13, 1994.

BRERETON C. JONES, Governor
PHILLIP J. SHEPHERD, Secretary

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

405 KAR 7:080E. 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

EFFECTIVE: May 27, 1994

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 transfer-

ee'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 19, 1994
FILED WITH LRC: May 27, 1994 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 6:050E

This policy is necessary as an emergency to relieve the visitation policy that affects citizens and residents of Kentucky who participate in vists to the Luther Luckett Correctional Complex to see honor status inmates. The change in this policy results from a recent meeting in the Governor's office with a number of visitors who expressed legitimate complaints concerning such visits and which this submitted administrative regulation shall partially satisfy. This administrative regulation is designed to help promote positive behavior and strengthen family ties.

BRERETON C. JONES, Governor
JACK C. LEWIS, Commissioner

DEPARTMENT OF CORRECTIONS

501 KAR 6:050E. Luther Luckett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: May 27, 1994
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised May 23 [~~April 15~~], 1994 are incorporated by reference and shall be referred to as Luther Luckett Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

LLCC 01-12-01 Duty Officer Responsibilities [~~(Amended 4/15/94)~~]
LLCC 01-13-01 Smoking: LLCC Facility
LLCC 02-01-02 Fiscal Management: Accounting Procedures
LLCC 02-01-03 Fiscal Management: Agency Funds
LLCC 02-01-04 Fiscal Management: Insurance
LLCC 02-03-01 Fiscal Management: Audits
LLCC 08-01-01 Offender Records [~~(Amended 4/15/94)~~]
LLCC 08-04-01 Storage of Expunged Records
LLCC 08-05-01 Psychological and Psychiatric Reports
LLCC 11-09-01 Rules and Regulations of the Unit
LLCC 11-13-01 Inmate Dress and Use of Access Areas
LLCC 11-18-02 Use of Monitor Telephone
LLCC 11-19-01 Unit Shakedowns/Control of Excess Property
LLCC 11-20-01 Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01 Special Management Inmates
LLCC 12-01-02 Pretrial Contract Hold Status
LLCC 13-01-01 Dining Room Guidelines
LLCC 13-04-01 Food Service: Meals
LLCC 13-04-02 Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02 Medical Screening of Food Handlers
LLCC 13-06-01 Food Service: Inspections and Sanitation
LLCC 13-07-01 Food Service: Purchasing, Storage and Farm Products
LLCC 13-08-01 OJT Food Service Training Placement
LLCC 14-01-01 Sanitation, Living Condition Standards, and Clothing Issue
LLCC 14-05-01 Institutional Inspections
LLCC 15-01-01 Health Maintenance Services; Sick Call and Pill Call
LLCC 15-03-01 Pharmacy
LLCC 15-03-02 Pharmacy Personnel
LLCC 15-03-03 Distribution, Procurement and Control
LLCC 15-03-04 Inmate - Self Administration of Medication [~~(Amended 4/15/94)~~]
LLCC 15-03-05 Use of Psychotropic Medications
LLCC 15-05-02 Licensure and Training Standards
LLCC 15-06-02 Specialized Health Services
LLCC 15-06-03 Emergency Medical/Dental Care Services
LLCC 15-06-04 First Aid/CPR Training Program
LLCC 15-06-05 Suicide Prevention and Intervention Program
LLCC 15-07-01 Health Records
LLCC 15-08-01 Special Diets
LLCC 15-14-01 Informed Consent
LLCC 15-15-01 Medical Restraints
LLCC 15-16-01 Health Education/Special Health Programs
LLCC 15-17-01 Serious and Infectious Diseases [~~(Amended 4/15/94)~~]
LLCC 16-01-01 Inmate Rights and Responsibilities
LLCC 16-03-01 Inmate Legal Services [~~(Amended 4/15/94)~~]
LLCC 18-01-01 Inmate Correspondence
LLCC 18-02-01 Inmate Visiting
LLCC 18-02-03 Extended Visit and Furloughs
LLCC 18-02-04 Meritorious Visits (Amended 5/23/94)
LLCC 18-03-01 Entry and Identification of Visitors for Inmate Visitation
LLCC 18-03-03 Inmate Visiting Disciplinary Segregation Administrative Segregation
LLCC 18-03-04 Parole Hearings
LLCC 20-01-01 Personal Property Control
LLCC 20-04-01 Inmate Canteen Committee
LLCC 20-04-02 Inmate Canteen
LLCC 20-04-03 Canteen Purchase Limits
LLCC 20-05-01 Inmate Control of Personal Funds
LLCC 20-05-02 Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
LLCC 20-05-03 Theft of Inmate Personal Property
LLCC 20-06-01 Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01 Classification/Security Levels
LLCC 21-03-01 Classification Process
LLCC 23-01-01 Academic School
LLCC 26-01-01 Religious Services [~~(Amended 4/15/94)~~]
LLCC 26-01-02 Prayer
LLCC 28-03-01 Temporary Release/Community Center Release
LLCC 28-04-01 Preparole Progress Report

LLCC 28-04-02 Parole Eligibility Dates

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: May 23, 1994
FILED WITH LRC: May 27, 1994 at 9 a.m.

STATEMENT OF EMERGENCY
704 KAR 3:035E

This emergency regulation, as approved by the State Board for Elementary and Secondary Education, is necessary in order to allow the changes to be made in 704 KAR 3:035 by the effective date of the legislation, July 15, 1994, and to facilitate the local district planning and approval processes by the Kentucky Department of Education for the 1994-95 Professional Development Plan. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the LRC.

BRERETON C. JONES, Governor
JOSEPH W. KELLY, Chairman

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development

704 KAR 3:035E. Annual professional development plan.

RELATES TO: KRS 156.095, 156.0951, 158.070
STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070
EFFECTIVE: May 24, 1994
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 24, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
803 KAR 25:035E

This emergency regulation concerns apparently inadvertent changes made to KRS 342.120(8)(b) and 342.320(1) by the General Assembly in the passage of House Bill 928. In addition to other, sweeping changes made in the 143 page bill, the General Assembly deleted reference in KRS 342.120(8)(b) to having the computation of the apportionment of benefits between the employer and the Special Fund being by reference to the life expectancies contained in the overall male or female mortality tables in the most recent available edition of the U. S. Decennial Life Tables. Reference to the U. S. Decennial Life Tables in the computation of benefits for the determination of an attorney's fee was also deleted from KRS 342.320. The General Assembly did not, however, specify any other means for the computation of the apportionment of liability or an attorney's fee. Therefore, pursuant to KRS 342.260 the Commissioner of the Department of Workers' Claims in the Labor Cabinet has proposed an administrative regulation requiring the use of the U.S. Decennial Life Tables as being necessary to permit the administrative law judges to efficiently and expeditiously carry out their responsibilities with respect to these computations. An ordinary administrative regulation alone is not sufficient to remedy this situation because House Bill 928 was enacted as emergency legislation which took effect on the date the Governor signed the bill into law, April 4, 1994. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
L. T. GRANT, Commissioner

LABOR CABINET
Department of Workers' Claims

803 KAR 25:035E. Computation of apportionment and attorney's fees.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS 342.260
EFFECTIVE: May 23, 1994
NECESSITY AND FUNCTION: House Bill 928 of the 1994 regular session of Kentucky General Assembly was passed as emergency legislation and went into effect when the Governor signed the bill on April 4, 1994. Possibly through inadvertence, the General Assembly deleted references to U.S. Decennial Life Tables in KRS 342.120(8)(b) and 342.320(1). These tables had been used previously in the computation of attorneys' fees and the apportionment of liability between employers and the Special Fund. A new method of computation was not provided in House Bill 928. The purpose of this regulation is to give the administrative law judges of the Department of Workers' Claims guidance with respect to the computation of attorneys' fees and the apportionment of benefits between the employers and the Special Fund, pursuant to the commissioner's authority under KRS 342.260.

Section 1. Computation of the Apportionment of Benefits Between the Employer and the Special Fund. Whenever an administrative law judge is required to compute the apportionment of benefits between the employer and the Special Fund pursuant to KRS 342.120(8), if another method is not required by the statute, the portions shall be based on the life expectancies contained in the overall male or female mortality tables in the most recent available edition of the U.S. Decennial Life Tables. If the most recent edition of the U.S. Decennial Life Tables includes Kentucky tables, these tables shall be used. If it does not, the national tables shall be used.

Section 2. Computation of Attorneys' Fees. Whenever an attorney's fee is being computed by an administrative law judge pursuant to KRS 342.320, and the statute does not require the use of another method, the award on which the attorney's fee shall be based shall be as actuarially determined on past and future benefits according to the life expectancies contained in the overall male or female mortality tables in the most recent available edition of the U.S. Decennial Life Tables. If the most recent edition of the U.S. Decennial Life Tables includes Kentucky tables, those tables shall be used. If it does not, the national tables shall be used.

L. T. GRANT, Commissioner
APPROVED BY AGENCY: May 20, 1994
FILED WITH LRC: May 23, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:009E

This emergency administrative regulation is being amended to show the use of physicians current procedural terminology (CPT) codes and limitations; the deletion of coverage for sterilization reversals; to limit fetal diagnostic ultrasound procedures to two (2) per pregnancy unless medical necessity for additional procedures is documented; to incorporate by reference the new Physician Manual (the reimbursement section has been revised to be generic); and to repeal the regulation which contained the outdated Physicians' Services Manual. 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 May 16, 1994.

BRERETON JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:009E. Physicians' services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50
EFFECTIVE: June 6, 1994
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [~~of Medical Assistance in accordance with Title XIX of the Social Security Act~~]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to physicians' services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program in behalf of both the categorically needy and the medically needy.

Section 1. Physicians' Services. (1) Covered services shall include those furnished by physicians through direct physician-patient contact in the office, the patient's home, a hospital, [~~a skilled~~] nursing [~~or intermediate care~~] facility or elsewhere.

(2) For purposes of the Medicaid [~~Medical Assistance~~] Program, oral surgeons shall be treated in the same manner as physicians with regard to coverage for services within their scope of licensed practice, and the term "physician" shall be construed to include oral surgeons unless the context in which it is used is to the contrary.

(3) Covered physicians' services and service limitations are shown in the Physician Manual.

Section 2. Physicians Manual. The Physician Manual specifies the conditions for participation, services covered, and limitations for the physicians' services component of the Medicaid Program. The Physician Manual, dated June 1, 1994, incorporated by reference in this administrative regulation may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. Additional [~~2.~~] Limitations. (1) [~~Coverage for initial and extensive visits shall be limited to one (1) visit per patient per physician per twelve (12) month period.~~

~~(2) Payment for outpatient psychiatric services rendered by other than board eligible and board certified psychiatrists shall be limited to four (4) such services per patient per physician per twelve (12) month period.~~

~~(3)~~] A patient placed in "lock-in" status due to overutilization shall [~~is to~~] receive services only from his lock-in provider except in the case of emergency or referral.

(2) Laboratory procedures.

(a) [~~(4) Coverage for~~] Laboratory procedures performed in the physician's office shall be limited to those procedures listed on the agency's physician laboratory benefit schedule. [~~Physician laboratory procedures are limited to those specified as payable, except that~~]

(b) The professional component of physician laboratory procedures performed by board certified pathologists in a hospital setting or an outpatient surgical clinic shall be [~~are~~] covered if [~~so long as~~] the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(3) [~~(5)~~] The cost of preparations used in injections shall not be considered a covered benefit, except as specified [~~for specified~~

~~immunizations identified~~] in the Physician Manual [~~Section 3 of this regulation~~].

[~~(6) Physicians will be allowed to secure drugs for specified immunizations identified in Section 3 of this regulation free from the Department for Health Services or to purchase drugs from the same specified immunizations from the open market to provide immunizations for Medicaid recipients. Reimbursement for the cost of these drugs will be in accordance with 907 KAR 1:010.~~]

(4) [~~(7)~~] Telephone contacts with patients shall not be considered a covered benefit.

(5) Services performed or recipient contacts made exclusively by physician assistants, nurses, or other physician's employees shall not be covered under the physicians' services component.

[~~Section 3. Specified Immunizations for Medicaid are:~~
~~(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);~~
~~(2) Measles, mumps, and rubella virus vaccine, live (MMR);~~
~~(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and~~
~~(4) Hemophilus B conjugate vaccine (HBCV).~~]

Section 4. 907 KAR 1:402, Incorporation by reference of the Physician Services Manual, is repealed.

MASTEN CHILDERS II, Commissioner, Secretary
APPROVED BY AGENCY: May 23, 1994
FILED WITH LRC: June 6, 1994 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:026E

This emergency administrative regulation is being amended to incorporate by reference the Dental Services Manual which was revised as a result of the changes to the dental reimbursement system effective June 1, 1994 and repeal the incorporated by reference regulation 907 KAR 1:414. This action must be taken on an emergency basis to implement policy in a timely manner; to eliminate the possibility of a policy conflict with 907 KAR 1:626; and avoid the potential loss of federal matching funds. This emergency administrative regulation shall be replaced by an ordinary regulation filed with the Regulations Compiler on or about June 1, 1994.

BRERETON JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:026E. Dental services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d
EFFECTIVE: June 6, 1994
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [~~of Medical Assistance in accordance with Title XIX of the Social Security Act~~]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to dental services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program in behalf of both the categorically needy and the medically needy.

Section 1. Out-of-hospital Services. Payment for services is limited to those procedures listed in the cabinet's dental benefit schedule which are included in the following categories:

(1) Diagnostic;
(2) Preventive;
(3) Oral surgery;
(4) Endodontics;
(5) Orthodontics;
(6) Prosthetics;
(7) Operative;
(8) Crown; and
(9) Other services.

Section 2. Dental Services Manual. (1) The policies and methods by the cabinet in covering dental services are specified in the cabinet's "Dental Services Manual" dated June 1, 1994, which is incorporated by reference in this administrative regulation.

(2) The Dental Services Manual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. eastern time in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. [~~2.~~] Limitations for Those Under Age Twenty-one (21). The following limitations shall be applicable with regard to services provided to eligible recipients of medical assistance who are under age twenty-one (21):

(1) Dental prophylaxis, to include application of stannous fluoride, is limited to one (1) treatment per year.

(2) Bitewing x-rays are limited to four (4) x-rays per patient per year per dentist.

(3) Full mouth radiograph is limited to one (1) per patient per every two (2) years per dentist.

(4) The following orthodontic procedures are limited per twelve (12) month period to any combination totaling two (2) per patient: fixed space maintainer, band type; removable space maintainer, acrylic; removable appliance for tooth guidance; and fixed or cemented appliance for tooth guidance. Effective with regard to services provided on or after July 1, 1989, the following orthodontic procedures are available upon appropriate preauthorization by the cabinet (except orthodontic consultation, which need not be preauthorized) when services are medically necessary to correct handicapping malocclusions, with limitations as specified for the individual procedure:

(a) Orthodontic consultation is limited to one (1) per recipient per twelve (12) month period;

(b) Preauthorized orthodontia services for moderately severe handicapping malocclusions;

(c) Preauthorized orthodontia services for severe handicapping malocclusions;

(d) Retention visit or stabilization visit is allowable as a separate procedure only when a patient is referred to another practitioner in another service area and is limited to one (1) per month per recipient with a maximum of twenty-four (24) retention visits and with a maximum of ten (10) stabilization visits per lifetime.

(5) The following prosthetic procedures are limited as specified for the individual procedure:

(a) Transitional appliance, includes one (1) tooth on appliance, upper appliance, is limited to one (1) per twelve (12) month period, per patient;

(b) Transitional appliance, includes one (1) tooth on appliance, lower appliance, is limited to one (1) per twelve (12) month period, per patient;

(c) Repair of fracture of transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;

(d) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;

(e) Repairing broken complete denture with no teeth damaged is limited to three (3) per twelve (12) month period, per patient; and

(f) Repairing broken complete denture and replacing one (1) broken tooth is limited to three (3) per twelve (12) month period, per patient.

(g) Relining upper denture (flask cured only) is limited to one (1) per twelve (12) month period per patient.

(h) Relining lower denture (flask cured only) is limited to one (1) twelve (12) month period per patient.

Section 4. [3.] Inpatient Hospital Services. (1) Payment shall be made for all hospital inpatient services rendered by oral surgeons subject to the general physician limitations shown in 907 KAR 1:009, Physicians' services.

(2) Payment shall be provided for services rendered by general dentists for hospital inpatient care for patients termed to be "medically a high risk," defined as:

(a) Heart disease;

(b) Respiratory disease;

(c) Chronic bleeder;

(d) Uncontrollable patient, i.e., retardate, emotionally disturbed;

(e) Other, e.g., car accident, high temperature, massive infection.

Section 5. [4.] Coverage of Dental Benefits for Adults. The following named dental benefits only shall be covered for adults (eligible individuals aged twenty-one (21) or over), effective January 1, 1982 except as otherwise specified in this regulation.

(1) Oral surgery, as follows:

(a) Extraction, single tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987;

(b) Extraction, each additional tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987; and

(c) Root removal (but not payable on the same day the same tooth was extracted).

(2) Operative, as follows:

(a) Amalgam filling for one (1) surface cavity;

(b) Amalgam filling for two (2) surface cavity;

(c) Amalgam filling for cavity involving three (3) or more surfaces;

(d) Silicate cement filling;

(e) Acrylic, plastic, or composite filling; and

(f) Buildup to repair a fractured incisal or anterior tooth.

(3) Diagnostic services, as follows:

(a) Bitewing x-rays, limited to four (4) x-rays per patient per year per dentist;

(b) Intraoral periapical radiograph, single view; and

(c) Full mouth radiograph, single panoramic film limited to one (1) per patient per every two (2) years per dentist.

(4) Preventive services as follows: adult dental prophylaxis, effective with regard to services provided on or after August 1, 1986.

(5) Other services, as follows: emergency treatment for pain, infection and hemorrhage.

Section 6. [5.] Other Provisions, Limitations and Clarifications. (1) Intraoral periapical radiograph, single view, is limited to fourteen (14) per patient, per year, per dentist.

(2) The procedure code for stainless steel crown will also include polycarbonate (acrylic) and full composite crown for anterior teeth. However, should a provider choose to provide crowns for anterior teeth, the usual and customary charge for a stainless steel crown must be billed.

(3) Bonded veneers are not covered as a separate entity, nor should they be provided and billed under any existing procedure code.

(4) The Sargenti method of root canal treatment is not covered under the present root canal procedure codes.

(5) The Medicaid [Medical Assistance] Program recognizes five (5) surfaces of a tooth (buccal or labial, mesial, distal, lingual, occlusal or incisal). Only one (1) filling may be billed per surface with a maximum of five (5) per tooth.

(6) Nitrous oxide is not covered under the procedure for general anesthesia or any other procedure.

(7) Effective with regard to services provided on or after May 1, 1989, the following procedures shall be covered for all age groups:

(a) Alveoplasty (alveoloplasty) in conjunction with extractions per quadrant;

(b) Apicoectomy (per tooth) - first root;

(c) Apicoectomy (per tooth) each additional root;

(d) Gingivectomy or gingivoplasty - per quadrant;

(e) Gingivectomy or gingivoplasty - per tooth;

(f) Biopsy - excision of benign tumor - lesion diameter up to 1.25 cm.;

(g) Frenulectomy (frenotomy or frenectomy - separate procedure);

(h) Suture of recent small wounds up to five (5) cm.;

(i) Incision and drainage - intraoral soft tissue;

(j) Incision and drainage - extraoral soft tissue;

(k) Removal of foreign body, skin, or subcutaneous areolar tissue;

(l) Hospital call;

(m) Emergency call (intermediate level of service); and

(n) Comprehensive oral examination (limited to one (1) per provider per recipient per year).

Section 7. 907 KAR 1:414, Incorporation by reference of the Dental Services Manual, is repealed.

MASTEN CHILDERS II, Commissioner, Secretary
APPROVED BY AGENCY: May 23, 1994
FILED WITH LRC: June 6, 1994 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:626E

This emergency administrative regulation is being promulgated to meet the cabinet's commitment to replace the emergency regulation currently in effect within a 30 day period with an ongoing revised reimbursement policy. The reimbursement methodology has been revised to show that providers will be paid the usual and customary actual billed charges up to the fixed upper limit per procedure established at seventy-eight (78) percent of the median billed charge using 1993 calendar year billed charges, effective June 1, 1994. This action must be taken on an emergency basis to continue program coverage and conserve scarce state resources. An emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about June 1, 1994.

BRERETON JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:626E. Reimbursement of dental services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441.30, 447 Subpart B, 42 USC 1396a-d

EFFECTIVE: June 6, 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. Definitions. 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 seventy-eight (78) percent of the median billed charge using 1993 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 shall 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. 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:

(1) Orthodontic consultation, seventy-seven (77) dollars, except that the fixed fee shall be thirty-eight (38) dollars and fifty (50) cents 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;

(2) Preauthorized early phase orthodontic services for moderately severe or severe handicapping malocclusion, $1,030 for orthodontists and $930 for general dentists:

(3) Preauthorized orthodontic services for moderately severe handicapping malocclusions, $1,375 for orthodontists and $1,250 for general dentists; and

(4) Preauthorized orthodontic services for severe handicapping malocclusions, $2,075 for orthodontists and $1,850 for general dentists.

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. Third-party Liability. Medicaid shall be the payor of last resort. Policy related to nonduplication of payments and third-party liability is shown in 907 KAR 1:005, Nonduplication of payments.

Section 7. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after June 1, 1994.

Section 8. 907 KAR 1:625E, Dental Services Reimbursement, is repealed.

MASTEN CHILDERS II, Commissioner and Secretary
APPROVED BY AGENCY: May 23, 1994
FILED WITH LRC: June 6, 1994 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:631E

This emergency administrative regulation is being promulgated to meet the cabinet's commitment to replace the emergency regulation currently in effect within a 30 day period with an ongoing revised reimbursement policy. The reimbursement methodology has been revised to show that the fixed upper limits per procedure for providers of vision care services will be set at 78 percent of the median billed charge using 1993 calendar year billed charges, effective June 1, 1994. This new reimbursement methodology will address the issue of overhead cost of the provider and maintain the savings at approximately $1.3 million annually. This action must be taken on an emergency basis to continue program coverage and achieve maximum savings. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about June 1, 1994.

BRERETON JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:631E. Reimbursement of vision care services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40, 440.60, 447 Subpart B, 42 USC 1396a-d
EFFECTIVE: June 6, 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 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 seventy-eight (78) percent of the median billed charge using 1993 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 seventy-eight (78) percent of the median billed charge using 1993 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. 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 6. Third Party Liability. Medicaid shall be the payor of last resort. Policy related to nonduplication of payments and third-party liability is shown in 907 KAR 1:005, Nonduplication of payments.

Section 7. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after June 1, 1994.

Section 8. 907 KAR 1:630E, Vision care services reimbursement, is repealed.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: May 23, 1994
FILED WITH LRC: June 6, 1994 at 9 a.m.

ADMINISTRATIVE REGULATIONS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

REVENUE CABINET
Department of Administrative Services
(As Amended)

103 KAR 18:120. Security for compliance; bonds.

RELATES TO: KRS 141.310
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation implements KRS 141.310(12) [(9)] which authorizes the cabinet to require certain employers to post withholding performance bonds.

Section 1. Enforcement of Trusteeship. Additional means of enabling the Revenue Cabinet to collect withholding taxes has been provided in KRS 141.310(12) [(9)] which authorizes the cabinet to fix the amount of and demand the posting of a corporate surety bond or cash not to exceed $50,000 by any employer required under KRS Chapter 141, or the regulations promulgated thereunder, to withhold Kentucky income taxes from wages of employees.

[~~Section 2. The Definition of the Word "Person." The word "person" has the meaning as defined in Section 7701(a)(1) of the Internal Revenue Code, and for convenience in the context of this regulation, it shall be construed to include but not be limited to an individual, a trust, estate, partnership, association, company or corporation, joint stock company and insurance company.~~]

Section **2. Bond Requirements. For purposes of** [~~3. Definition of "Employer." The word "employer" has the meaning as defined in Section 3401(d) of the Internal Revenue Code, and for convenience in the context of this regulation, it shall be construed to include but not be limited to the persons for whom an individual performs or performed any services, of whatever nature, as the employee of such person and shall be construed as used in~~] KRS 141.310(12) [~~(9)~~] [~~as~~] a person from whom the department is authorized to require a withholding tax security bond and those persons from whom a security bond may be required includes but is not limited to the following:

(1) An employer who is delinquent in either filing withholding tax returns required by law or is delinquent in submitting to the cabinet any tax withheld from an employee, or both, or

(2) An employer, whom for any reason, the cabinet determines is or may become an insecure risk for which there is a need to insure compliance with the law, including every out-of-state employer during the employer's first year of operation in this state or any employer engaged under one (1) or more contracts the total of which is to be performed within one (1) year.

Section **3.** [~~4.~~] Bond Procedures. The cabinet, after determining that a bond is necessary to insure compliance of reporting and paying withholding taxes, shall demand the posting of such a security bond by written notice transmitted by certified mail and shall include therein instructions and forms for the convenience of the employer.

Section **4.** [~~5.~~] Enforcement of Bond Requirement. (1) Failure to post the bond in the amount the cabinet demanded from the employer within twenty (20) days from the date of the written notification by certified mail will, by such failure, authorize the cabinet to invoke forthwith, and without further delay, its statutory authority to seek a court order requiring cessation of all business or activities of such an employer failing to post the bonds; provided, that the employer may accompany the bond with, and simultaneously file with the cabinet, a written protest or appeal from the cabinet's demand for the bond; provided further, that any such protest or appeal shall be supported by a written memorandum advancing the employer's reasons and proposed justifications why such employer should be relieved from posting the bond or the objections to the amount of the bond.

(2) Within sixty (60) days after receipt of any bond posted under protest or appeal, the cabinet shall furnish the employer by certified mail a final ruling or order and notice of any change as to, or in the amount of the bond that may be necessary to be made by the cabinet in accordance with such final ruling or order in response to the protest or appeal.

Section **5.** [~~6.~~] Change in Amount of Bond. The cabinet has authority at any time to increase or decrease the amount of any bond that has been posted.

Section **6.** [~~7.~~] Monthly Returns and Payment. Notwithstanding the provisions of 103 KAR 18:040 any out-of-state or delinquent employer may be required to file monthly withholding tax returns and to accompany such monthly returns with a complete payment of all taxes withheld during the month covered by the return.

Section **7.** [~~8.~~] Court Jurisdiction. The cabinet may initiate action seeking a court order, requiring cessation of all business operation or activity of any employer failing to comply with this regulation, in the Franklin Circuit Court or in any other circuit court which may have jurisdiction over the area in which the employer resides, or in which some or all of the employer's business is conducted, or having jurisdiction of the area in which property of the employer is located. The cabinet may institute any such legal action in accordance with any provision of this regulation.

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

LABOR CABINET
Department of Workplace Standards
Division of Employment Standards and Mediation
(As Amended)

803 KAR 1:085. Fringe benefits.

RELATES TO: KRS 337.505 to 337.550
STATUTORY AUTHORITY: KRS **337.520(1)** [~~Chapter 13A~~] [~~337.520(1)~~]
NECESSITY AND FUNCTION: KRS 337.520(1) authorizes the commissioner to make regulation he may deem appropriate to carry out the provisions and purposes of KRS 337.505 to 337.550. The function of this regulation is to interpret the prevailing wage and fringe benefit provisions of KRS 337.505 to 337.550.

[~~Section 1. The Statutory Provisions. The Commissioner of the Department of Workplace Standards has the authority to determine schedules of rates of prevailing wages and of the amount of fringe benefits included therein as defined in KRS 337.505. The statute defines the term "prevailing wage" as the sum of:~~

~~(1) "The basic hourly rate paid;" and~~

~~(2) "An additional amount per hour equal to the hour rate of contribution irrevocably made to be made by an employer on behalf of employees within each classification of construction to a trustee or~~

~~to a third person pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the employees affected, for the following fringe benefits: medical or hospital care, pensions on retirement, death compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, defraying costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the employer is not required by other federal, state or local law to provide any of such benefits; provided, said additional amount may, at the discretion of the employer, be paid either in cash to the employee or by contributions for fringe benefits, or partly in cash and partly by such contributions."]~~

Section 1. Definitions. (1) "Prevailing wage" is defined pursuant to KRS 337.505(1) and (2).

(2) "Bona fide fringe benefits" means those benefits which are common in the construction industry and established under a standard plan or program.

Section 2. The Basic Hourly Rate of Pay. The basic hourly rate paid **shall be** [~~is~~] that part of a laborer, workman, and mechanic's wage which the commissioner would have determined and included in his determination as the portion of the wage in which a cash payment was made directly to the laborer, workman, and mechanic. It **shall** [~~does~~] not include fringe benefits.

Section 3. Rate of Contribution for Fringe Benefits. (1) [~~Under the statute,~~] The commissioner is obligated to make a separate finding of the rate of contribution of fringe benefits. Only the amount of contributions for fringe benefits which meets the requirements of **KRS 337.505-337.550 shall** [~~the statute will~~] be considered by the commissioner.

(2) The rate of contribution **shall be** [~~is~~] an hourly rate and **shall** [~~will~~] be reflected in the wage determination as **an hourly rate** [~~such~~]. [~~The rate of contribution is ordinary an hourly rate and will be reflected in the wage determination as such. In some cases, however, the contribution for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the commissioner may in his discretion express in the wage determination the rate of contribution used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the law.~~]

Section 4. Contribution Irrevocably Made to a Trustee or to a Third Person. **(1)** Under the fringe benefits provisions of KRS 337.505 the amount of contributions for fringe benefits **shall** [~~must~~] be made to a trustee or to a third person irrevocably.

(2) The third person **shall not be affiliated** [~~must be one who is not affiliated~~] with the employer.

(3) The trustee **shall** [~~must~~] assume the usual fiduciary responsibilities imposed upon trustees by applicable law.

(4) The trust or fund **shall** [~~must~~] be set up in [~~such~~] a way that **shall prevent the employer from recapturing** [~~in no event will the employer be able to recapture~~] any of the contributions paid in or in any way diverting the funds to his own use or benefit.

(5) Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this **shall** [~~does~~] not prevent **the** return to the employer any sums which he had paid in excess of the contributions actually called for by the plan**; for example**, [~~as~~] where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained.

Section 5. Plan or Program. **A fringe benefit shall not be** [~~Under the statute, the contributions for fringe benefits must be made pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the affected employees. No type of fringe benefit will be~~] eligible for consideration under this part unless:

(1) It provides fringe benefits described in the statute;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the employees affected.

Section 6. Specific Fringe Benefits. (1) [~~The statute lists all types of fringe benefits which the legislature considered to be common the construction industry as a whole. These include the following: medical or hospital care, pensions on retirement, death compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, defraying costs of apprenticeship or other similar programs, other bona fide fringe benefits, but only where the employer is not required by other federal, state or local law to provide any of such benefits.~~

~~(2) The term "other bona fide fringe benefits" is the so called open end provision of the statute. This was included so that new fringe benefits may be recognized by the commissioner as they become prevailing. To insure against considering and giving credit to any and all fringe benefits, some of which may be illusory or not genuine, the qualification was included that such fringe benefits must be "bona fide." No difficulty is anticipated in determining whether a particular fringe benefit is "bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual plan or program.~~] Employers may take credit for contributions made under conventional plans**, pursuant to KRS 337.505(2),** [~~listed in subsection (1) of this section~~] which are funded under a trust or insurance program.

(2) [~~(3)~~] Where the plan is not the conventional type described in the preceding subsection, it will be necessary for the commissioner to examine the facts and circumstances to determine whether they are "bona fide" in accordance with the requirements of the statute. Employers seeking credit for such plans **shall** [~~must~~] request specific permission from the commissioner.

(3) KRS 337.505(2) [~~(4) The statute~~] excludes fringe benefits which an employer is obligated to provide under [~~other~~] federal, state or local law. **These types of fring benefits shall not receive any credit and shall not be recognized as part of the prevailing wage rate.** [~~No credit may be than for payments made for such benefits.~~] For example, payment for workers' compensation insurance **shall not be** [~~are not~~] considered payments for fringe benefits under the statute.

Section 7. Meeting Wage Determination Obligations. [~~(1) An employer performing work subject to a prevailing wage determination may discharge his minimum wage obligations for the payment of both the straight time wages and fringe benefits by paying in cash the basic hourly rate and by making payments for fringe benefits of the types listed in the applicable wage determination, or by paying in cash the basic hourly rate and paying fringe benefits partly in cash and partly in contributions for fringe benefits.~~

~~(2)~~] An employer may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination in the following ways**, by paying**:

(1) [~~(a) By paying~~] Not less than the basic hourly rate to the laborers, workmen, and mechanics and by making the contributions for the fringe benefits in the wage determination, as specified therein.

(2) [~~(b) By paying~~] Not less than the basic hourly rate to the laborers, workmen, and mechanics and by making contributions for

fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination.

(3) [~~(c) By paying~~] In cash directly to the laborers, workmen, and mechanics the basic hourly rate and by making an additional cash payment in lieu of the required benefits.

Section 8. Overtime Payments. (1) The law includes amounts paid by an employer for fringe benefits in the computation of overtime under KRS 337.540(3). In no event shall [~~It is clear that in no event can~~] the rate upon which premium pay for overtime is calculated be less than the amount determined by the commissioner as the basic hourly rate. Contributions by employees shall not be [~~are not~~] excluded from the basic rate upon which overtime is computed; that is, an employee's basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The employer's contributions for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the rate below the basic hourly rate contained in the wage determination.

(2) The statute permits an employer to pay a cash equivalent of any fringe benefits found prevailing by the commissioner. Such a cash equivalent would also be excludable in computing the rate upon which overtime is computed.

CAROL M. PALMORE, Secretary
APPROVED BY AGENCY: March 11, 1994
FILED WITH LRC: March 11, 1994 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Commission on Fire Protection Personnel Standards and Education
State Fire Marshal's Office
(As Amended)

815 KAR 45:025. Commission meetings and proceedings.

RELATES TO: KRS 95A.040, 95A.050(1), HB 62
STATUTORY AUTHORITY: KRS 95A.050(1), (3)
NECESSITY AND FUNCTION: This administrative regulation sets forth definitions as well as rules and procedures governing the manner and form of meetings and proceedings initiated and conducted by the Commission on Fire Protection Personnel Standards and Education.

Section 1. Definitions. (1) "Commission" means the Commission on Fire Protection Personnel Standards and Education.

(2) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(3) "Department" means the Department of Housing, Buildings and Construction.

(4) "Division" means the Division of Fire Prevention, State Fire Marshal's Office.

(5) "Fire department" means and includes a fire department organized under KRS Chapter 75, a fire protection district, a volunteer fire department, or a municipal, county or urban-government fire department.

(6) "Fire protection personnel" means an employee or member of a "fire department" whether paid or unpaid, who is engaged in any of the following:

(a) Fire prevention;

(b) Inspecting buildings for compliance with building, fire, energy and life-safety codes and compliance with the Architectural Barriers Act;

(c) Fire suppression;

(d) Fire and arson investigation;

(e) Fire-related emergency medical and rescue work;

(f) Other allied fields recognized and approved by the commission.

(7) "Fire protection instructor" or "fire service training officer" means any person certified, pursuant to KRS 95A.040(2)(b) as qualified to instruct fire protection personnel.

Section 2. (1) Voting on reports, recommendations, and contracts. In order for any of the following decisions or actions to be made, a majority of the commission members shall have cast affirmative votes.

(a) Recommending administrative regulations to the commissioner pursuant to KRS 95A.050(3) to establish procedures for certification that training and education programs meet minimum standards pursuant to KRS 95A.040(2)(a);

(b) Entering into contracts with other agencies or persons pursuant to KRS 95A.050(2) [~~95A.040(2)~~];

(c) Recommending to the commissioner administrative regulations prescribing the qualifications and certification procedures for fire protection instructors pursuant to KRS 95A.040(2)(b); or

(d) Making studies, recommendations and reports to the governor or legislature pursuant to KRS 95A.040(1).

(2) Public meetings. It shall be the policy of the commission that all its proceedings shall be open to the public and to the press and other news media representatives, unless forbidden by law. This policy shall also apply to the proceedings of any subcommittee of the commission.

(3) Parliamentary rules. The commission shall adopt appropriate rules for the orderly conduct of commission or subcommittee meetings.

(4) Complaints; advisory opinions. At any regular meeting, the commission may receive complaints, render decisions, deliver advisory opinions, or authorize or request studies and reports by personnel in the State Fire Marshal's Office for any of the purposes set forth in KRS 95A.040, 95A.050, and any administrative regulation adopted thereunder.

(5) Subcommittees. The commission may establish and govern the subcommittees of its members as it may deem advisable or desirable for the orderly conduct of its business.

Section 3. Administrative Support for Commission. (1) Staff services. Personnel of the division shall provide administrative and technical services to the commission as the commissioner deems necessary or desirable, upon the request of the commission.

(2) Training services. The commission may contract with the Department for Adult and Technical Education to develop curricula and training delivery plans, in conjunction with that department's advisory committee, for the entire range of local fire department duties, technology and activities. In addition, the Department for Adult and Technical Education may furnish school facilities in and among the vocational and technical schools under its jurisdiction for this training. The Department for Adult and Technical Education may be awarded a sum from the commission's budgeted funds in order to pay the salary of a clerk to assist the Department for Adult and Technical Education with maintenance of records and files and the performance of other clerical tasks associated with training of fire protection personnel and instructors and the certification of fire protection personnel, instructors and training programs.

(3) Codes enforcement. The commission may contract with the division to provide training to fire protection personnel in building, fire and life-safety codes enforcement, energy code enforcement, Architectural Barriers Act enforcement, and the legal and administrative aspects of fire safety and building inspections.

Section 4. Coordination Among Agencies. Upon approval by the commission, the Department for Adult and Technical Education may provide on-job field training and classroom training of instructors and fire protection personnel and may be reimbursed by the commission

for such functions as may be permitted by law. Jefferson Community College, Northern Kentucky University, Eastern Kentucky University, and any other qualified person or agency, may provide faculty or educational services, lodging, meals or other administrative support for the training of instructors and fire protection personnel, and may be reimbursed in accordance with a contract entered into by the commissioner pursuant to KRS 95A.050(2) and in furtherance of any purpose assigned by the law to the commissioner, the department, or the commission relating to the training or provision of technical assistance to fire protection personnel.

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: April 1, 1994
FILED WITH LRC: April 14, 1994 at 10 a.m.

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

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

RELATES TO: KRS 12.290, **28 CFR 35.160,** 29 USC 794, 42 USC 12101 et seq.

STATUTORY AUTHORITY: KRS 12.290, 194.050

NECESSITY AND FUNCTION: In accordance with federal mandates in **28 CFR 35.160,** 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. **The Department for Mental Health and Mental Retardation Services and the Department for Social Services and their contract agents shall first attempt to obtain a nationally certified interpreter when providing counseling and therapeutic 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) **Verification of equivalent qualifications obtained in other states; or**

(c) By documentation demonstrating passage of **a** [~~the~~] state screening test administered by the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) **and determined by the cabinet or its contract agents to be of a qualification level which meets the needs of the individual seeking program services.** [~~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.

(a) "Hourly rates" include travel, **time,** meals and other related expenses with the exception of **mileage and** lodging.

(b) "Lodging" shall have prior approval and shall not exceed fifty (50) dollars per night excluding taxes.

(c) "Mileage" shall be paid at the state rate in accordance with 200 KAR 2:006.

(d) "Travel time" shall be determined reasonable by the cabinet or its contract agent based on mileage and road and driving conditions on the date of service.

(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)~~] 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 **may assist in obtaining an available community resource to provide** [~~can access~~] interpreter services.

(4) [~~(5)~~] The Department for Mental Health and Mental Retardation Services and the Department for Social Services **and their contract agents** [~~facilities~~] shall have emergency provisions as specified in Section 1(2) of this administrative regulation for individuals who are patients or **facility** 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) The individual seeking program services shall be informed, in writing, of his rights to effective communication provided at no expense to the individual. The provision of rights is incorporated in the form OPB-001-A which shall be provided to the individual seeking program services.

(7) The [An] individual **seeking program services** shall have the right to waive the provision of an interpreter **to be provided through the cabinet or contract agent**. If the provision is waived, the individual **shall** [must] complete and sign an OPB-001-**B. The waiver may be rescinded at any time by the individual. A copy of the signed Waiver of Interpreter Services, OPB-001-B, is provided to the individual.**

(8) If the individual seeking program services believes the interpreter provided by the cabinet does not have sufficient qualifications as defined in Section 1(4) of this administrative regulation, the individual may request interpreter services of a higher skill level.

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 **no less than eight (8) dollars per hour and** up to twenty-two (22) dollars per hour for time limited interpreter services. This rate [shall be an all inclusive payment, which] includes **time spent in travel, interpreting and meal time. Meal time shall not exceed one (1) hour.** [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.

(4) The cabinet, at least annually, shall consult with the KCDHH regarding its recommendations of qualification standards and payment rates for interpreter services.

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-**A, Your Rights to Effective Communication, dated June 1, 1994; the OPB-001-B,** Waiver of Interpreter Services, dated **June** [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 **of Personnel** [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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)

907 KAR 1:013. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.575, 1992 Acts c. 462, Part I.G.52.b.2

STATUTORY AUTHORITY: KRS 194.050, 205.460, 1992 Acts c. 462, Part I.G.52.b.2., 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4

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. [KRS 205.575 provides for hospital indigent care assurance program (HICAP) payments.] This administrative regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. (1) The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised November 29, 1993 [July 1, 1992], which is incorporated by reference in this administrative regulation.

(2) For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential).

(3) The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. eastern time in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. General Description of the Payment System. The following provisions shall be applicable for purposes of setting inpatient hospital payment rates:

(1) Use of prospective rates. Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days.

(a) The prospective rate shall be all inclusive in that both routine and ancillary cost shall be reimbursed through the rate.

(b) For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used.

(c) For universal rate years beginning on or after January 1, 1985, the prospective rate shall not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary.

(d) [~~However,~~] Total prospective payments shall not exceed the total customary charges in the prospective year.

(e) Overpayments shall be recouped:

1. By payment from the provider [~~to the cabinet~~] of the amount of the overpayment; or

2. [~~alternatively,~~] By the withholding of the overpayment amount [~~by the cabinet~~] from future payments [~~otherwise~~] due the provider.

(2) Use of a uniform rate year. A uniform rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for psychiatric [~~mental~~] hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the psychiatric [~~mental~~] hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, shall be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used shall be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be [~~peer~~] grouped with other acute care hospitals according to bed size (referred to as "peer grouping").

(a) The peer groupings for the payment system shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up.

(b) [~~(except that the~~] Designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless the [~~such~~] facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in [~~such~~] a manner which [~~as to~~] recognizes the presence of the major pediatric teaching component existing outside the state university hospitals[~~)~~].

(c) A [~~No~~] facility in the 201-400 peer group shall not have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up.

(d) Psychiatric [~~Mental~~] hospitals shall not be peer grouped but shall have a separate array of psychiatric [~~mental~~] hospitals only.

(e) Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature shall not be peer grouped or arrayed.

(6) Use of a minimum occupancy factor. A minimum occupancy factor shall be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor shall apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to psychiatric [~~mental~~] hospitals.

(8) Use of upper limits with regard to services provided on or after November 29, 1993 [~~July 1, 1991~~].

(a) The following upper limits and payment principles shall apply to all hospitals with other limitations for disproportionate share hospitals shown in paragraph (b) of this subsection.

1.a.(i) For acute care hospitals, except hospitals with 100 beds or less, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year.

(ii) For acute care hospitals with 100 beds or less, the upper limit on all costs (except Medicaid capital cost) shall be established at 110 percent of the weighted median per diem for hospitals in the peer groups, using the most recent Medicaid cost report available as of December 1 of each year.

b. For psychiatric [~~mental~~] hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A psychiatric [~~mental~~] hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index.

c. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy.

d. Disproportionate share hospitals [~~participating in the Hospital Indigent Care Assurance Program (HICAP)~~] shall also receive, in addition to regular program payments, disproportionate share hospital payments as described in the Reimbursement Manual at Section 102C. [~~amounts which are payable under HICAP. Effective with regard to payments for the quarter ending June 30, 1992 and thereafter, the HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the amounts remaining, from the hospital assessments paid, for distribution to hospitals after exclusion of appropriate amounts for administrative expense, the contingency reserve amount, and amounts reserved for other program needs in accordance with budget commitments, obligations, and appropriations, and taking into consideration available federal Medicaid matching funds and upper limits on HICAP payments). The formula for determination of HICAP payment amounts is shown in the Reimbursement Manual at Section 102D(b)(2), (3), (4), and (5). No hospital participating in HICAP shall receive on an annual basis less than five and one quarter (5.25) percent of its operating costs, or five (5) percent of its annual operating costs plus $100,000, whichever amount is greater. For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made.~~]

e. Provider taxes shall be considered allowable cost. For the rate

period beginning November 29, 1993, the allowable cost of the tax shall be added to the hospital rate with no offsets and without regard for usual upper limits. For subsequent rate periods the cost (excluding, effective March 1, 1994, any per diem rate adjustments for the prior rate period relating to provider taxes) shall be shown in the appropriate cost report with adjustment as necessary to reflect an annual amount.

f. Allowable cost growth from the prior rate base year to the new rate base year shall be limited to not more than one and one-half (1 1/2) times the Data Resources, Inc. inflation amount for the same time period; limits shall be applied by component (capital and operating cost only); cost growth beyond the allowable amounts shall be considered unallowable cost for rate setting purposes.

2. For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual. [~~amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.~~]

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual. [~~amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.~~]

3. Psychiatric [~~Mental~~] hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual. [~~The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so results in a higher per diem amount.~~]

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual. [~~amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.~~]

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) and (d) and those hospitals which may not meet the [~~such~~] criteria but meet the criteria specified in 42 USC 1396r-4(d) and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and psychiatric [~~mental~~] hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one-half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. **For the period ending June 30, 1994, the following policy shall be in effect:**

a. Each disproportionate share hospital shall be paid a minimum disproportionate share payment amount for the type of hospital plus any earned adjustment to which the hospital is entitled. The hospital types, minimum payment amounts, and earned adjustments shall be as follows **and shall only remain in effect for the period ending June 30, 1994**:

(i) Type I hospitals shall be those acute care **and psychiatric** in-state hospitals serving a federally designated medically underserved area, a federally designated health manpower shortage area, or a primary care physician shortage area designated under the rural Kentucky medical scholarship fund, when the hospital has fifty (50) beds or less. Minimum amount: ninety-five (95) dollars per Medicaid day.

(ii) Type II. These hospitals shall be described in the same manner as Type I, except these hospitals have fifty-one (51) beds to 100 beds. Minimum amount: seventy (70) dollars per Medicaid day.

(iii) Type III. These hospitals shall be described in the same manner as Type I except these hospitals have 101 beds to 200 beds and include rehabilitation hospitals. Minimum amount: fifty-five (55) dollars per Medicaid day.

(iv) Type IV. These hospitals shall be described in the same manner as Type I except these hospitals have 201 or over beds and include rehabilitation hospitals. Minimum amount: forty-five (45) dollars per Medicaid day.

(v) Type V. All acute care **and psychiatric** in-state hospitals with 100 beds and under except those described as Type I or II. Minimum amount: forty-five (45) dollars per Medicaid day.

(vi) Type VI. All acute care, [~~and~~] rehabilitation **and psychiatric** in-state hospitals with 101 beds to 200 beds except those that are

Type III. Minimum amount: thirty-five (35) dollars per Medicaid day.

(vii) Type VII. These hospitals shall be described in the same manner as Type I, except the type shall be limited to rehabilitation hospitals. Minimum amount: ninety-five (95) dollars per Medicaid day.

(viii) Type VIII. These hospitals shall be described in the same manner as Type II, except the type shall be limited to rehabilitation hospitals. Minimum amount: seventy (70) dollars per Medicaid day.

(ix) Type IX. All rehabilitation hospitals, with 100 beds and under except those described as Type VII or VIII. Minimum amount: forty-five (45) dollars per Medicaid day.

(x) Type X. All other in-state hospitals ~~[including psychiatric hospitals]~~. Minimum amount: ten (10) dollars per Medicaid day.

(xi) Type XI. All out-of-state hospitals. Minimum amount: one (1) dollar per Medicaid day.

b.(i) Each Type I through Type X hospital shall have the opportunity for an earned payment adjustment based on the provision of indigent care (i.e., care provided to Medicaid recipients beyond the Medicaid covered days or to individuals or families with income under the poverty level).

(ii) **For the period of July 1, 1993 through June 30, 1994,** the earned adjustment shall equal ten (10) dollars for each indigent day of care provided plus an amount equal to the cost of the indigent care (at Medicaid rates) provided by the hospital for which there has been no direct or indirect payment (i.e., where the cost of the care has not been paid or cost-shifted to other payors) **with an adjustment to account for outpatient services so the total indigent care per diem rate shall be up to but not in excess of 140 percent of the Medicaid per diem rate.**

(iii) A hospital shall be presumed to have received payment for indigent care to the extent that other patient revenues exceed other patient costs, and to the extent that direct or other indirect payments are made to the hospital for the indigent care.

(iv) A one (1) time disproportionate share payment shall be paid as appropriate for the period of June 15, 1994 through June 30, 1994 to those hospitals qualifying under the following formula:

i. The amount of disproportionate share indigent care payments earned by the hospital using the formula in effect during the period of July 1, 1993 through June 30, 1994 shall be compared to an amount which is derived by computing the amount of earnings that would have been realized during the period of July 1, 1993 through June 30, 1994 using the revised formula taking effect on July 1, 1994 (shown in subparagraph 2 of this paragraph); the one (1) time payment amount shall be the amount (if any) by which the amount derived by using the formula effective July 1, 1994 exceeds the actual amount earned under the formula which was in effect; and

ii. If the one (1) time payments would cause the total of all disproportionate share payments to exceed $81,000,000 for the period of July 1, 1993 through June 30, 1994, all one (1) time payments shall be reduced proportionately so the total amounts of disproportionate share payments for the period of July 1, 1993 through June 30, 1994 shall equal but not exceed $81,000,000.

(v) ~~[(iv)]~~ Any acute care disproportionate share hospital with 100 beds or less whose July 1, 1993, or January 1, 1994, per diem payment rate is less than the April 1, 1993 rate paid as of June 30, 1993, and also less than full allowable per diem costs for the services provided by the hospital as of July 1, 1993, or January 1, 1994, respectively, shall receive an adjustment to the hospital's disproportionate share minimum payment for the period March 1, 1994 through June 30, 1994. The payment adjustment for an acute care hospital shall be determined by multiplying the number of the hospital's Medicaid days as follows:

i. For services provided for the July 1, 1993 through December 31, 1993 period by the difference between the hospital's July 1, 1993 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost; and

ii. For services provided for the January 1, 1994 through June 30, 1994 period by the difference between the hospital's January 1, 1994 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost.

(vi) ~~[(v)]~~ Any acute care **or psychiatric** disproportionate share hospital of 100 beds or less shall receive an additional disproportionate share hospital payment of $200,000 for the period March 1, 1994 through June 30, 1994. This payment shall be made in two (2) equal installments of $100,000 each with the first payment amount to be paid on or before March 31, 1994 and the second payment amount to be paid on or before June 30, 1994.

c. Each Type XI hospital shall qualify for an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation. ~~[All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.]~~

2. The disproportionate share hospital payments for the period beginning July 1, 1994 and thereafter shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate (except that total disproportionate share payments for indigent care services provided during the 1995 fiscal year shall not exceed $81,000,000; if payments will cause the limits to be exceeded, all hospitals earned amounts shall be adjusted proportionately). The inpatient equivalent care days for each hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

3. ~~[2.]~~ Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 to children under the age of six (6) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children.

~~[3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.]~~

(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.

(11) Hospitals whose general characteristics are not those of an acute care or psychiatric ~~[mental]~~ hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital

group to participate as a member of the rate review panel.

Section 4. Payments to Participating Out-of-state Hospitals. (1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission, participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) and children under age six (6), without regard to length of stay or number of admissions of the infants and children.

(3) Effective with regard to services provided on or after February 1, 1991, professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 5. Except as otherwise specified the changes shown in this administrative regulation shall be effective with regard to services provided on or after November 29, 1993.

MASTEN CHILDERS II, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 7, 1994
FILED WITH LRC: February 9, 1994 at 3 p.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

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

401 KAR 5:037. Groundwater protection plans.

RELATES TO: KRS 151.110, 151.232, 224, SB 241
STATUTORY AUTHORITY: KRS 224.01-010, 224.10-100, 224.70-100, 224.70-110
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt administrative regulations to protect waters of the Commonwealth and to prevent pollution of waters of the Commonwealth. This administrative regulation establishes the requirement to prepare and to implement groundwater protection plans to ensure protection for all current and future uses of groundwater and to prevent groundwater pollution.

Section 1. Definitions. The following definitions describe terms used in this administrative regulation. Terms not defined below shall have the meanings given to them by KRS 224.01-010 or if not so defined, the meanings attributed by common use.

(1) "Abandoned well" means a well not currently in use and not intended for future use.

(2) "Agriculture operation" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of farms, situated on ten (10) contiguous acres or more of land used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and qualifications for payment to agriculture programs under an agreement with the state or federal government.

(3) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. Best management practices also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(4) "Bore hole" means a hole drilled into the soil for exploratory or sampling purposes.

(5) "Bulk quantities" means undivided quantities of any substance equal to or greater than fifty-five (55) U. S. gallons liquid measure or 100 pounds net dry weight transported or held in an individual container.

(6) "Commercial" means services at stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding households and industries.

(7) "Container" means any portable enclosure in which a material is stored, transported, treated, disposed, or otherwise handled.

(8) "Core hole" means a hole drilled for the purpose of obtaining a rock sample.

(9) "Corrective action" means an activity or measure taken to remedy groundwater pollution.

(10) "Floor drain" means an opening in the floor used to collect spills, water, or other liquids.

(11) "Generic groundwater protection plan" means a groundwater protection plan that can be applied to activities conducted at different locations because the activities are substantially identical and because the potentials of the activities to pollute groundwater are substantially the same.

(12) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, or solution conduits.

(13) "Groundwater pollution" means water pollution as defined in KRS 224.01-010 of groundwaters of the Commonwealth.

(14) "Groundwater protection plan" means a document that establishes a series of practices designed to prevent groundwater pollution.

(15) "Hydrogeologic sensitivity" means an assessment of the potential ease and speed of vertical infiltration or recharge of a liquid through the soil and the unsaturated zones combined with assessments of the maximum potential flow rate and dispersion potential after entry into the principal or uppermost saturated zone.

(16) "Industrial" means manufacturing or industrial processes, including, but not limited to, the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment.

(17) "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of the rock has occurred due to flowing groundwater.

(18) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(19) "Loading and unloading areas" means areas used for loading and unloading, and related handling of raw materials, intermediate substances, products, wastes, or recyclable materials. Loading and unloading areas include, but are not limited to, areas used to load and unload drums, trucks, and railcars.

(20) "On-site sewage disposal system" means a complete system installed on a parcel of land, under the control of ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" and "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of sewage pretreatment unit, distribution box, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system, or wasteload to overcome the site limitations;

(c) An alternative system consisting of a sewage pretreatment unit, necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption systems or conventional, modified, or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system or connection to a

municipal sewer.

(21) "Pesticide" means:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; or

(c) Any substance or mixture of substances intended to be used as a spray adjuvant.

(22) "Privately-owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a publicly-owned treatment works.

(23) "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock.

(24) "Sinking stream" means a surface stream in a karst region that disappears underground usually through gradual seepage of flow along the channel bottom.

(25) "Storing" means the containing of materials, products, substances, wastes, or other pollutants on a temporary basis in such a manner as not to constitute disposal.

(26) "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials, which is designed to hold an accumulation of liquids or solids.

(27) "Water well" or "well" means any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including but not limited to culinary and household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes and industrial, irrigation, and dewatering purposes.

(28) "Wellhead protection area" means the surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field or spring or an area defined as a wellhead protection area in a county water supply plan.

(29) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

Section 2. Scope and Applicability. (1) Scope. The goal of this administrative regulation is the prevention of groundwater pollution. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.

(2) Applicability. Except for activities as provided in subsections (3) and (4) of this section any person responsible for conducting any of the following activities shall prepare and implement a groundwater protection plan in accordance with the requirements of this administrative regulation:

(a) Storing or related handling of **bulk quantities of** pesticides or fertilizers for commercial purposes;

(b) Storing or related handling of **bulk quantities of** pesticides or fertilizers for the purpose of distribution to a retail sales outlet;

(c) Applying of pesticides or fertilizers for commercial purposes;

(d) Applying of fertilizers or pesticides for public right-of-way maintenance or institutional lawn care;

(e) Land treatment or land disposal of a pollutant;

(f) Storing, treating, disposing, or related handling of hazardous waste, solid waste, or special waste in landfills, incinerators, surface impoundments, tanks, drums or other containers, or in piles;

(g) Commercial or industrial storing or related handling in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants held in tanks, drums or other containers, or in piles;

(h) Transmission in pipelines of raw materials, intermediate substances or products, finished products, or other pollutants;

(i) Installation or operation of on-site sewage disposal systems;

(j) Storing or related handling of road oils, dust suppressants, or deicing agents at a central location;

(k) Application or related handling of road oils, dust suppressants or deicing materials;

(l) Mining and associated activities;

(m) Installation, construction, operation, or abandonment of wells, bore holes, or core holes;

(n) Collection or disposal of pollutants in an industrial or commercial facility through the use of floor drains which are not connected to on-site sewage disposal systems, closed-loop collection or recovery systems, or **a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System** [~~privately- or publicly-owned treatment works~~];

(o) Impoundment or containment of pollutants in surface impoundments, lagoons, pits, or ditches; or

(p) Commercial or industrial transfer, including loading and unloading, in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants.

(3) General exclusion. Any person who conducts an activity identified in subsection (2) of this section shall not be required to prepare or to implement a groundwater protection plan for that activity if that person can demonstrate by substantial evidence based on the factors set forth in this subsection, the activity has no reasonable potential of altering the physical, thermal, chemical, biological, or radioactive properties of the groundwater in a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life, to the use of groundwater as present or future sources of public water supply or to the use of groundwater for recreational, commercial, industrial, agricultural, or other legitimate purposes. The demonstration shall at a minimum consider the following factors:

(a) Hydrogeologic sensitivity at or near the location of the activity;

(b) Quantity of the pollutants, including the cumulative potential to pollute from small discharges, spills, or releases which individually would not have the potential to pollute;

(c) Physical, chemical, and biological characteristics of the pollutants such as solubility, mobility, toxicity, concentration, and persistence;

(d) Use of the pollutants at the locations of the activities; and

(e) Present and potential uses of the groundwater.

(4) Specific exclusions. The provisions of this administrative regulation shall not apply to the following activities:

(a) Normal use or consumption of products sized and packaged for personal use by individuals;

(b) Retail marketing of products sized and packaged for personal use or consumption by individuals;

(c) Activities conducted entirely inside enclosed buildings if:

1. The building has a floor sufficient to prevent the release of pollutants to groundwater; and

2. There are no floor drains, or all floor drains within the building are connected to an on-site sewage disposal system, closed-loop collection or recovery system or a **waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System** [~~privately- or publicly-owned treatment works~~];

(d) Storing, related handling, or transmission in pipelines of pollutants that are gases at standard temperature and pressure;

(e) Storing municipal solid waste in a container located on property where the municipal solid waste is generated and which is used solely for the purpose of collection and temporary storage of that municipal solid waste prior to off-site disposal;

(f) **Installing** [~~Activities associated with~~] sewer lines or water lines **approved by the cabinet**;

(g) Storing water in ponds, lakes or reservoirs;

(h) Impounding stormwater, silt, or sediment in surface impoundments;

(i) Application of chloride-based deicing materials used on roads or parking lots;

(j) Emergency response activities conducted in accordance with local, state, and federal law;

(k) Fire fighting activities;

(l) Conveyance or related handling by motor vehicle, rolling stock, vessel, or aircraft;

(m) Agricultural activities at agriculture operations; or

(n) Application by commercial applicators of fertilizers or pesticides on lands used for agriculture operations.

(5) Relationship to other programs. Nothing in this administrative regulation shall abrogate the duty of a person to comply with the statutes and other administrative regulations administered by the cabinet, with the statutes and administrative regulations administered by other state and federal agencies, or with statutes and ordinances administered by a local government.

Section 3. Preparation of Groundwater Protection Plans. (1) General requirements. A groundwater protection plan establishes a series of practices to be followed by the person required to prepare and to implement it. The practices established by a groundwater protection plan shall be designed and implemented in a manner that will prevent groundwater pollution. This section describes the contents of site-specific and generic groundwater protection plans. Any person conducting an activity identified in Section 2(2) of this administrative regulation shall determine if an exclusion of Section 2(3) or (4) of this administrative regulation applies to that activity.

(2) Deadlines for preparation and implementation. Except for [~~an~~] activities excluded by Section 2(3) or (4) of this administrative regulation, any person required to prepare and to implement a groundwater protection plan pursuant to Section 2 of this administrative regulation, shall prepare and implement a site-specific or generic groundwater protection plan within one (1) year of the effective date of this administrative regulation, or upon commencement of the regulated activity, whichever is later.

(3) Elements of generic and site-specific groundwater protection plans. Both generic and site-specific groundwater protection plans shall contain the following:

(a) General information regarding the facility and its operation, including the name of the facility, the address of the facility, and the name of the person responsible for implementing the plan;

(b) Identification of all activities identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation;

(c) Identification of all practices chosen for the plan to protect groundwater from pollution;

(d) An implementation schedule for the practices selected for the plan;

(e) A description of and implementation schedule for employee training necessary to ensure implementation of the plan;

(f) An inspection schedule requiring regular inspections as needed to ensure that all practices established are in place and properly functioning;

(g) A certification by the person responsible for implementing the plan or a duly authorized representative that the plan complies with the requirements of this administrative regulation, and that the person responsible for implementing the plan has reviewed the terms of the plan and will implement its provisions.

(4) Selection of practices for groundwater protection. Any person required to prepare a groundwater protection plan pursuant to this section shall evaluate technological means for protection of groundwater from pollution that may result from activities addressed by the plan and shall select practices for the plan which protect groundwater from pollution. The groundwater protection practices chosen for a groundwater protection plan may include but are not limited to:

(a) Equipment design;

(b) Operational procedures;

(c) Preventive maintenance techniques;

(d) Construction techniques;

(e) Personnel training;

(f) Spill response capabilities;

(g) Alternative materials or processes;

(h) Implementation of new technology;

(i) Modification of facility or equipment;

(j) Spill prevention control and countermeasure plans;

(k) Best management practices;

(l) Hazardous waste contingency plans;

(m) Other plans prepared pursuant to other programs which protect groundwater from pollution;

(n) Runoff or infiltration control systems;

(o) Siting considerations; and

(p) Any other practice which will protect groundwater from pollution.

(5) Specific practices. In selecting practices to protect groundwater for the activities identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation any person preparing a groundwater protection plan shall consider the nature of the pollutant and the hydrogeologic characteristics at or near the location of the activity and shall comply with the provisions of this subsection in selecting those practices:

(a) Loading and unloading areas. Loading and unloading areas shall have spill prevention and control procedures and operation procedures designed to prevent groundwater pollution. Spill containment and cleanup equipment shall be readily accessible.

(b) On-site sewage disposal systems. No person shall install a new or replace an existing on-site sewage disposal system if a publicly- or privately-owned treatment works capable of treating the pollutants to be discharged is available.

(c) Floor drains. Any person using existing floor drains shall evaluate those floor drains to determine if they discharge to an on-site sewage disposal system, to a closed-loop collection or recovery system, or to **a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System** [~~privately- or publicly-owned treatment works~~]. If drains are identified which do not discharge to an on-site sewage disposal system, a closed-loop collection or recovery system, or **a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System** [~~privately- or publicly-owned treatment works~~], that person shall terminate the discharge or connect it to an on-site sewage disposal system, a closed-loop collection or recovery system, or a **waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System** [~~privately- or publicly-owned treatment works~~]. No person shall install a floor drain unless it is connected to an on-site sewage disposal system, closed-loop collection or recovery system, or **a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System** [~~privately- or publicly-owned treatment works~~].

(d) Tanks and sumps. Any person using a tank or sump shall prepare and implement good housekeeping practices, operating procedures, operator training, and spill response procedures. In addition, any person using a tank or sump shall consider leak control devices, secondary containment, integrity testing, mechanical inspections, and overfill protection devices. Additional containment is not required for sumps and tanks that are used solely to provide secondary containment.

(e) New surface impoundments, lagoons, pits or ditches. Any person who constructs a new surface impoundment, lagoon, pit or ditch which will contain a pollutant shall evaluate the site's hydrogeology and shall design and operate it to minimize discharges to soil. However, soils may be used to construct liners under appropriate conditions. All necessary and appropriate measures shall be taken to

prevent groundwater pollution. The person shall consider the use of liners, secondary containment, leak detection devices, and other appropriate and effective control systems. Additional containment is not required for new surface impoundments, lagoons, pits, and ditches that are used solely to provide secondary containment.

(6) Exceptions to specific requirements.

(a) The provisions of subsection (5) of this section shall not apply to activities that are governed by other federal, state or regulatory programs that meet the requirements of subsection (7) of this section while the person conducting the activities remains in compliance with the other program.

(b) Variances from the provisions of subsection (5) of this section may be granted by the cabinet upon a showing of good cause, but in no event shall any person required to prepare a groundwater protection plan pursuant to this section take any actions contrary to the provisions of subsection (5) of this section without prior written approval of the cabinet.

(7) Incorporation of requirements of other regulatory programs.

(a) Groundwater protection activities required by other federal, state, or local regulatory programs may be incorporated into a site-specific or generic groundwater protection plan by reference if the other regulatory program contains the following:

1. Management and design standards;

2. Mandatory monitoring for groundwater pollution or methods of detecting discharges, spills, or releases to groundwater; and

3. Specific corrective action criteria.

(b) The plan shall identify each activity covered by the other regulatory program. The person responsible for implementing the plan shall certify compliance with the other regulatory program. The provisions of the other program shall be the groundwater protection plan for purposes of this administrative regulation for the activities covered by the other regulatory program. If activities identified in Section 2(2) of this administrative regulation and not excluded in Section 2(3) or (4) of this administrative regulation are conducted which are not covered by the other regulatory program, the plan shall contain separate practices designed to protect groundwater from pollution for each activity not covered by the other regulatory program.

(8) Generic groundwater protection plans. A generic groundwater protection plan may govern all or part of a person's activities. A generic groundwater protection plan shall not be sufficient by itself if it does not address all activities conducted by the person that are identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation. A generic groundwater protection plan shall be prepared in accordance with subsections (1) through (7) of this section.

(a) A person responsible for preparing and implementing a groundwater protection plan required by this administrative regulation may apply one (1) provision of the plan to all substantially identical activities if factors identified in Section 2(3) of this administrative regulation do not cause substantial differences in the potential to pollute among locations. If substantial differences do exist, the plan shall provide separate site-specific or region-specific preventive measures, as necessary, for the activities.

(b) A person responsible for preparing a groundwater protection plan governed by this section may use a generic groundwater protection plan prepared by another person or group, including a trade organization, if:

1. The activities identified in the generic groundwater protection plan are substantially identical;

2. The factors identified in Section 2(3) of this administrative regulation do not cause substantial differences in the potentials to pollute among locations; and

3. The groundwater protection plan has been reviewed and approved by the cabinet.

(c) A generic groundwater protection plan may consist of requirements imposed by other regulatory programs designed to protect groundwater or programs offering technical assistance for groundwater protection if the cabinet has approved the requirements of the other program as a generic groundwater protection plan. Any person using a generic groundwater protection plan from another program pursuant to this paragraph as a part of, or all of, his plan shall certify in his plan that he is subject to the program and in compliance with its provisions. Any activities which are not addressed by the program shall be addressed separately in the groundwater protection plan.

(d) Any person conducting an activity listed in this subsection who does not prepare a groundwater protection plan for that activity or does not use another approved generic groundwater protection plan for that activity shall implement the provisions of the generic groundwater protection plan prepared by the cabinet. The cabinet, in cooperation with other appropriate state agencies, shall prepare generic groundwater protection plans for:

1. Use of existing residential septic systems; and

2. Construction, operation, closure, and capping of water wells.

(e) A generic groundwater protection plan that has been approved by the cabinet may be incorporated by reference in a facility's groundwater protection plan; however, each person responsible for implementing the generic plan at a site shall maintain a copy of the plan at an appropriate, accessible location. Any person using a generic groundwater protection plan shall identify the activities governed by the plan and attach the identification to the copy of the generic plan.

(f) Any person preparing a new or revised generic groundwater protection plan to be approved by the cabinet shall submit that plan to the cabinet for approval. When that person submits that plan to the cabinet that person shall also place a notice in a statewide newspaper and a trade publication likely to be read by those affected by the groundwater protection plan. That notice shall provide for a thirty (30) day comment period and shall identify activities that are addressed by the proposed generic groundwater protection plan. The notice shall describe the procedure for review by the public of the plan and the procedures and time frames for providing comments. The cabinet shall also notify by mail anyone who has requested in writing to be placed on a mailing list for purposes of this administrative regulation.

Section 4. Implementation of Groundwater Protection Plans. (1) Record retention requirements.

(a) Any site-specific groundwater protection plan required by Sections 2 through 4 of this administrative regulation, and any documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, at the location of the activity if the location is normally attended at least eight (8) hours per day, or at the nearest office of that person's activity if the facility is not so attended.

(b) Any generic groundwater protection plan and any documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, in as many locations as necessary to ensure compliance. Individual homeowners are not required to maintain a copy of the generic groundwater protection plan for residential septic systems at their residences.

(c) Unless the cabinet approves another retention period for a person, all records evidencing compliance shall be maintained and available for review by the cabinet for a period of six (6) years after their preparation.

(2) Amendment of groundwater protection plans. Prior to conducting any new or modified activity, any person conducting that activity shall amend the groundwater protection plan, as necessary, to address the new or modified activity.

(3) Review and recertification of groundwater protection plans. Each groundwater protection plan shall be reviewed in its entirety every three (3) years, by the persons responsible for the plan, updated if necessary, and recertified. To the extent possible, the

review shall include a reevaluation of the design and operation procedures for the pollution prevention practices previously selected for the plan to ensure that they are effective.

(4) Submission of groundwater plans to cabinet.

(a) Upon written request of the cabinet, any person required to prepare a groundwater protection plan pursuant to this administrative regulation shall submit a copy of the plan to the cabinet within thirty (30) days.

(b) Upon written request of the cabinet, any person who has made a determination pursuant to Section 2(3) of this administrative regulation that a groundwater protection plan is not required for a specific activity shall submit a written demonstration to the cabinet within thirty (30) days.

(5) Submission of additional information to the cabinet. Upon review of a groundwater protection plan which has been submitted to the cabinet, the cabinet may require any person responsible for preparation or implementation of a plan to submit any of the following information that the cabinet deems necessary:

(a) For a site-specific groundwater protection plan, and for a generic groundwater protection plan in effect at a specific location, the location of all buildings, structures, roads, utilities, drainage pathways, and boundaries by using a narrative description or by using a map, diagram, or drawing;

(b) For a generic groundwater protection plan that applies to more than one (1) location, identification of the geographic region to which the generic groundwater protection plan applies, and an explanation as to why that region was selected and why one (1) plan is appropriate for all activities addressed by the plan for all sites within the region;

(c) For a generic groundwater protection plan that applies to more than one (1) location, to the extent possible, a description of the nature and number of activities, and their associated facilities, that are expected to be governed by the generic groundwater protection plan;

(d) Summary of reasonably available hydrogeologic information as follows:

1. Identification of location of sinkholes, sinking streams, springs, streams, lakes, ponds, and ditches;

2. Description of soil survey information;

3. Identification and location of currently usable wells, abandoned wells, and wellhead protection areas;

4. Identification of subsidence areas; and

5. Description of any other relevant hydrogeologic data known to the person preparing or implementing the groundwater protection plan; and

(e) Any other site-specific groundwater or geologic information, which is known and readily available to the person responsible for preparing or implementing the plan but not to the cabinet, that the cabinet deems necessary.

(6) Revisions to plans after cabinet review. If the cabinet reviews a groundwater protection plan and determines that it does not meet the requirements of this administrative regulation, the cabinet shall notify the person responsible for preparing or implementing the plan of the deficiency in the plan. That person shall revise the plan to correct the deficiencies identified by the cabinet and submit the revised plan to the cabinet for further review. Unless an extension of time is granted by the cabinet or the notice of deficiency is withdrawn by the cabinet, the person submitting the revised plan shall have thirty (30) days from issuance of the notice of the deficiencies to submit the revised plan. The cabinet shall review the revised plan and notify the person submitting the revised plan of its final determination.

(7) Public inspection of groundwater protection plans.

(a) Any person who desires to review a groundwater protection plan shall send a written request to the person required to prepare and to implement the groundwater protection plan.

(b) Any person who receives a written request to review the groundwater protection plan shall within ten (10) working days:

1. Send a written response to the person requesting to inspect the groundwater protection plan stating that the groundwater protection plan may be reviewed at:

a. The Division of Water in Frankfort;

b. A regional office of the Division of Water;

c. The facility; or

d. A local public library; or

2. Send a written response to the person requesting to inspect the groundwater protection plan, stating the reason that a groundwater protection plan was not required to be prepared.

(c) Any person who designates a review location for a groundwater protection plan shall send a copy of the groundwater protection plan to the location designated for review within ten (10) working days of receiving a written request to review the plan.

(8) Requirements upon transfer of property. Upon any subsequent transfer of a facility for which a groundwater protection plan has been prepared, the seller shall provide the purchaser with a copy of the most recent groundwater protection plan prepared for the facility pursuant to this administrative regulation.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: June 8, 1994
FILED WITH LRC: June 8, 1994 at 10 a.m.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Amended After Hearing)

415 KAR 1:114. Contractor certification.

RELATES TO: KRS 224.60-110, 224.60-130
STATUTORY AUTHORITY: KRS 224.60-130
NECESSITY AND FUNCTION: KRS 224.60-130 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This regulation sets forth the criteria for obtaining certification from the commission to be eligible to contract to perform corrective action for a release from an underground petroleum storage tank, and to be eligible to receive reimbursement or payment from the fund. This administrative regulation is necessary to set minimum standards for determining technical competency and proficiency in the performance of corrective action and general knowledge of cleanup standards required to obtain closure from the Underground Storage Tank Branch, health and safety standards, and Petroleum Storage Tank Environmental Assurance Fund regulations.

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

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

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

(3) "Interim contractor" means an individual who is not a certified contractor and is identified by a company to replace a certified contractor in accordance with Section 8 of this administrative regulation.

(4) "Participation in" means direct and substantial involvement in each aspect of corrective action, including site characterization, preparation of site investigation reports, preparation of proposed corrective action plans, and implementation of corrective action plans

approved by the cabinet.

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

(6) "Cabinet" as used in this administrative regulation means the Cabinet for Natural Resources and Environmental Protection unless specified otherwise.

Section 2. Applicability. (1) Beginning **March 1, 1995** [~~September 1, 1994~~], costs for actions performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund if the corrective action is:

(a) Performed or supervised by an individual who is certified by the commission; and

(b) Performed in compliance with 401 KAR Chapter 42.

(c) This requirement shall apply only to applications for assistance agreements made after March 1, 1995 [~~September 1, 1994~~].

(2) Certified contractors shall perform or supervise corrective action, such as, site checks, site investigations, and preparation of corrective action plans, in accordance with the administrative regulations of the cabinet.

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

(4) A person or company who installs, repairs, closes, or removes an underground storage tank, not involving the performance of corrective action, shall not be subject to this administrative regulation.

Section 3. Application Requirements. (1) An applicant for certified contractor shall:

(a) Submit an application to the commission on the Certified Contractor Application form; and

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

(c) Complete the examination requirements of this administrative regulation.

(2) An application to take the certified contractor examination shall be denied by the commission if the applicant:

(a) Fails to provide the information required by the application form; or

(b) Fails to comply with the experience requirements of this administrative regulation; or

(c) [~~Fails to successfully pass the examination required by this administrative regulation; or~~

~~(d)~~] Makes a misrepresentation or submits false information in the application.

(3) An applicant, that has been assigned a testing date and time, shall request a change in their testing schedule in writing to the commission. If the request for a rescheduled testing date falls into another testing quarter, the applicant must reapply to the commission.

(4) An applicant requesting to resit the certified contractor examination shall reapply to the commission.

Section 4. Experience Requirements. (1) An applicant shall demonstrate participation in, as defined in Section 1(4) of this administrative regulation, the performance of corrective action at a minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.

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

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

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

Section 5. Examination Requirements. An applicant for certified contractor shall take and pass a written examination administered by the commission in compliance with this section.

(1) The examination for certification shall be a written multiple choice examination covering all aspects of:

(a) Corrective action for a release from a petroleum storage tank system - the examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to performing corrective action where a release has occurred from a petroleum storage tank system; and

(b) Applicable occupational health and safety and public health and safety requirements - the examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to applicable occupational health and safety and public health and safety requirements; and

(c) Knowledge of the reporting requirements, documentation requirements and procedures of the regulatory agency (Underground Storage Tank Branch) and the Petroleum Storage Tank Environmental Assurance Fund Commission - the examination shall test the applicant's knowledge of codes, laws and regulations with respect to these two (2) governmental agencies.

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

(3) Examinations shall be given quarterly through December 31, **1997** [~~1995~~], and semiannually thereafter.

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

(5) All examinations shall be graded and the applicants shall be notified within fifteen (15) working days. Examination papers shall not be returned to or reviewed by the applicant, however, the applicant may review their test response sheet by appointment.

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

Section 6. Certification and Renewal Procedures. (1) The commission shall issue a certificate to each individual who successfully complies with this administrative regulation. The certificate shall be renewed annually.

(2) An application for renewal shall be submitted to the commission on the Certified Contractor Application for Renewal form.

(3) The renewal of a certificate shall be denied by the commission if an applicant:

(a) Fails to provide the information required by the Certified Contractor Application for Renewal form; or

(b) Makes a misrepresentation or submits false information in the application for renewal; or

(c) Failed to supervise a corrective action during the year prior to renewal; or

(d) Fails to maintain a professional registration.

(4) An applicant denied the opportunity to take the certification test or denied the renewal of their contractor certification may appeal the determination by requesting a hearing pursuant to 415 KAR

1:120.

(5) The commission may require that a certified contractor take and pass a written examination to renew a certification if there has been a significant change in the laws, codes or industry recommended practices with respect to performing corrective action and/or procedures, reporting requirements and document requirements to be submitted to the Underground Storage Tank Branch or the Petroleum Storage Tank Environmental Assurance Fund Commission since the date of original certification.

(a) The commission may waive this requirement for professional engineers and certified professional geologists registered in Kentucky if the applicant has submitted proof of successful completion of pertinent training.

(b) The determination to waive this requirement rests solely in the commission.

Section 7. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation may be suspended or revoked by the commission if the certified contractor:

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

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

(3) Obtained the certification through fraud or misrepresentation; or

(4) Fails to perform a corrective action in a manner consistent with generally acceptable professional standards.

(5) A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

Section 8. Interim Contractor. (1) A company engaged in the performance of corrective action at a facility shall immediately notify the commission in writing of the extended absence of a certified contractor due to an emergency or unanticipated circumstances. The notice shall provide the commission with the following information:

(a) Name and qualifications of the individual replacing the certified contractor; and

(b) The length of time for which the company seeks to have the interim contractor fulfill the obligations of the certified contractor.

(2) The commission shall evaluate the qualifications of the designated interim contractor and shall notify the company of the commission's determination in writing within fifteen (15) days of receipt of the company's notice. The determination shall:

(a) Approve or deny the company's request for designation of the interim contractor;

(b) Specify conditions as appropriate to the facility and the interim contractor's qualifications.

Section 9. (1) The following forms are incorporated by reference:

(a) "Certified Contractor Application Form (March, 1994)"; and

(b) "Certified Contractor Application for Renewal Form (March, 1994)".

(2) These forms may be obtained, inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

Section 10. Applicants certified under the provisions of 415 KAR 1:115, effective March 1, 1994, shall not be deprived of their certification granted pursuant to the test results from the February 16-17, 1994 certification examinations if the recipient of the certification attends the seminars conducted by the Underground Storage Tank Branch addressing the changes in cleanup standards and closure procedures. The holder of the certification shall submit written proof of seminar attendance, verified by the Underground Storage Tank Branch, to the commission.

Section 11. The provisions of this administrative regulation shall be enforced beginning **March 1, 1995** [~~September 1, 1994~~].

Section 12. 415 KAR 1:115 is repealed.

JACK HALL, Executive Director
APPROVED BY AGENCY: June 8, 1994
FILED WITH LRC: June 8, 1994 at 11 a.m.

TRANSPORTATION CABINET
(Amended After Hearing)

600 KAR 1:101. 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

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 implements the provisions of KRS 45A.800 to 45A.835.** [~~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 these 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 **Number 94057** 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 **July, 1994** [~~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.

(2) [~~(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.

(3) [~~(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.

(4) [~~(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 **July, 1994** [~~August 11, 1993~~] which is incorporated by reference as a part of this administrative regulation.

(5) [~~(6)~~] The head of the user division or office shall notify the Division of Specialized Programs of its evaluation results.

(6) [~~(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.

(7) [~~(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 **unless different instructions are communicated to the firm either verbally or in writing**.

(c) Failure to submit the completed forms in a timely manner shall cause the removal of the firm's prequalification status.

(8) [~~(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.

(9) [~~(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.

(10) [~~(11)~~](a) If a prequalified firm fails to notify the Division of Specialized Programs of a change of address, it **may** [~~shall~~] be removed from the list of prequalified firms until it notifies the division

of its new address.

(b) **If the change of address notification is submitted to the Division of Specialized Programs during what would have been the firm's prequalification year and no other changes have occurred in the firm, the firm shall be restored to the list of prequalified firms.**

(c) Removal from the list of prequalified firms pursuant to this subsection, shall not be a basis for appeal under the provisions of Section **6** [~~5~~] of this administrative regulation.

Section 5. **Removal from List of Prequalified Firms. (1) A firm may be removed from the list of prequalified firms by the prequalification committee for any of the following reasons:**

(a) Failure to submit an annual application on the firm's anniversary date;

(b) Falsification of the firm's prequalification application as to its qualifications;

(c) Falsification of the firm's response to announcement of any project;

(d) Violation of the Executive Branch Ethics Law contained in KRS Chapter 11A;

(e) Falsification of the information provided to the Transportation Cabinet for audit purposes;

(f) Failure to have a current firm license from the Kentucky Professional Board of Registration;

(g) Failure to notify the Transportation Cabinet of the loss of personnel which has an impact on the firm's prequalification or project management within thirty (30) days; or

(h) Violation of the firm's certification that the firm's owner, principals or partners, or any family member having an interest of ten (10) percent or more in any business entity involved in the performance of the contract have not contributed more than the amount specified in KRS 121.056(2) to the gubernatorial campaign of the current governor.

(2) The chairman of the prequalification committee shall notify the firm in writing of its proposed removal from the list of prequalified firms and the reason for the proposed removal.

Section 6. Appeal Procedure for Firms Not Qualified **or Removed from Prequalified List**. (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) **A firm may appeal its removal from the list of prequalified firms pursuant to Section 5 of this administrative regulation.**

(3) The cabinet shall establish a consultant prequalification committee to evaluate the statements of qualifications of firms which appeal a disapproval rating **or removal from the list of prequalified firms**.

(4) [~~(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.

(5) [~~(4)~~] An appeal **pursuant to Section 4 of this administrative regulation** 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.

(6) [~~(5)~~] The basis of the appeal and the relief sought shall be stated in the written communication to the chairman.

(7) [~~(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.

(8) [~~(7)~~] The committee shall notify the State Highway Engineer and the firm of its decision.

(9) [~~(8)~~] If the firm's appeal is denied by the committee, the firm may appeal the decision **within thirty (30) days of written notice:**

(a) Relating to nonqualification to the State Highway Engineer**; or**

(b) Relating to removal from the list of prequalified firms to the Secretary of the Transportation Cabinet. [~~within thirty (30) days of written notice of denial.~~]

(10) [~~(9)~~] The State Highway Engineer **or Transportation Cabinet Secretary, as appropriate,** shall notify the firm of his decision within thirty (30) days. The decision of the State Highway Engineer **or Transportation Cabinet Secretary** shall be final.

Section **7.** [~~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 **8.** [~~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 **highway projects or projects on another mode of transportation or intermodal** transportation projects for the Kentucky Transportation Cabinet; **and** [~~or~~]

b. With **highway projects or projects on another mode of transportation or intermodal** 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 **as provided by the user division**;

b. **A discussion of procedures to follow for submission of a proposal on the project** [~~A request for expression of general interest~~];

c. **An anticipated project schedule as provided by the user division;** [~~A request for a statement of technical qualification; and~~]

d. Any requirements for Disadvantaged Business Enterprise (DBE) utilization;

e. Deadline for filing responses;

f. The evaluation factors and their relative weights on which the responses will be evaluated by the selection committee;

g. A timetable for the selection committee's meetings for the project;

h. A list of firms prequalified in each applicable category as of the date of the bulletin; and

i. In certain circumstances deemed appropriate by the state highway engineer, the maximum fee for consultant services for the project.

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 **July, 1994** [~~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 **July, 1994** [~~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 **or subcontractor be prequalified in the specified areas of prequalification prior to the response due date published in the announcement of the need for engineering or related services for a particular project or shall not be considered for selection.** [~~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) **Responses received with fewer copies of the response than required shall be returned to the firm and shall not be listed for consideration to perform the project.**

(d) 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 **16** [~~15~~] of this administrative regulation.

Section **9.** [~~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 **the following forms which are incorporated by reference as a part of this administrative regulation:**

(a) [a] Certificate of Understanding of Restrictions for Members of Professional Engineering Services Selection Committee, form TC 40-9 effective **May, 1994.** [~~July, 1992. This form is incorporated by reference as a part of this administrative regulation.~~]

(b) "Ex Parte Disclosure Form", Form TC 40-6 as effective May, 1994;

(c) "Certificate of Confidentiality Form", Form TC 40-4 as effective May, 1994; and

(d) "Certificate of Conformity with Procurement Process", Form TC 40-10 as effective May, 1994.

(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.

(c) Each Transportation Cabinet member of a selection committee shall file an annual statement of financial disclosure pursuant to KRS 11A.050.

Section **10.** [~~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 **five (5) voting** [~~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 **five (5)** voting members of the selection committee.

(c) A motion or decision of the selection committee shall require a **simple affirmative vote of all** [~~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 **second** 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. **These evaluations and ratings are preliminary and therefore confidential working documents.**

(4) In executive session at its second meeting, the selection committee shall determine the three (3) best qualified firms and develop a ranking of the three (3) by considering the weighted evaluation factors that appeared in the procurement bulletin.

(5)(a) Each committee member shall list all firms in his top three (3) rankings.

(b) All firms included on any of these lists shall be placed on the short list of firms.

(6)(a) All firms included on the short list shall be individually discussed by the committee with regard to their qualifications and the quality of their proposals.

(b) Each committee member shall be given the opportunity to provide insight into why each firm should or should not be selected for the project.

(c) Any firm may be eliminated from further consideration by consensus of the selection committee members.

(7)(a) Each firm remaining under consideration after the discussion period set forth in subsection (6) of this section shall be individually ranked by the committee members using secret ballots.

(b) A new listing of short-listed firms based on the composite rankings of the secret ballots shall be discussed by the selection committee.

(c) Any firm may be eliminated from further consideration by consensus of the selection committee members.

(8) If at the end of the process set forth in subsection (7) of this section, more than three (3) firms remain under consideration, the process set forth in subsection (7) of this section shall be repeated until only three (3) firms remain for consideration by the selection committee.

(9) Each of the three (3) firms identified in subsection (8) of this section shall be individually ranked by the committee members using secret ballots.

(10)(a) Unless there is a tie between two (2) of the firms, the results of subsection (9) of this section shall determine the ranked order of the three (3) best qualified firms.

(b) If there is a tie ranking and if one (1) of the firms has indicated that more of its work tasks will be performed in Kentucky, that firm shall be ranked higher than the other with which it had tied.

(c) If there is a tie ranking and if the work tasks to be performed in Kentucky are equal, the selection committee shall again perform the functions set forth in subsection (7) of this section until the tie is broken.

~~[(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.~~]

(11) [~~(10)~~] If the selection committee elects, it may interview any of the responding firms to aid in its determination of the best qualified firm.

(12) [~~(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 **top-ranked** firms as specified in the procurement bulletin **and may select a second and third ranked firm**, but at **a minimum of** [~~least~~] three (3) firms **shall be ranked**.

(13) [~~(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.

(14) [~~(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 **11.** [~~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 **and an identification of the assignment of the work units to the prime firm or a subcontractor**.

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**, an identification of the assignment of the work units to the prime firm or a subcontractor,** 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 **and an identification of the assignment of the work units to the prime firm or a subcontractor.** [~~including all subconsultants.~~]

(d) For geotechnical assessments a copy of the work units which qualifies the tasks to be performed to achieve the geotechnical services that appear in the announcement **and an identification of the assignment of the work units to the prime firm or a subcontractor**.

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 **and an identification of the assignment of the work units to the prime firm or a subcontractor**.

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 **and an identification of the assignment of the work units to the prime firm or a subcontractor**.

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 **12** [~~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 **12.** [~~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) **Effective January 1, 1995 for negotiation purposes, the maximum direct salary for a nonprincipal or nonpartner of a professional firm shall be $75,000 per year (thirty-six (36) dollars and six (6) cents) per hour);**

(d) Effective January 1, 1995, in the calculation of indirect costs for overhead, the maximum salary of a nonprincipal or nonpartner of a professional firm for administrative purposes shall be $75,000 per year;

(e) The maximum allowable overhead rate shall be 150 percent;

(f) **[~~(d)~~]** Travel expenses for firm employees or survey crews shall be limited to those incurred from an office in Kentucky **or the border of Kentucky nearest the firm's office**;

(g) Through December 31, 1994, **[~~(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.

(h) Effective January 1, 1995, for negotiation purposes, direct expenses shall be limited to the following items and 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. Printing of reports for distribution external to the Transportation Cabinet - estimated cost from the printer per document;

6. 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;

7. Special equipment which is project specific; and

8. Capital cost of money.

(i) **[~~(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 **accepted by** **[~~from~~]** a federal, state or local governmental agency **and desires the Transportation Cabinet to utilize that audit for establishment of its overhead rate, the firm shall provide the audit report to the Transportation Cabinet prior to the scheduled audit.** **[~~,~~]** 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 **13.** **[~~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 **14.** **[~~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 **either a statement that the payment shall be based on the percentage of work completed or the proposed project milestones and corresponding maximum percentage payments and** 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 $**3,000,000** **[~~2,000,000~~]**; or

c. For a contract with the total direct labor cost, plus overhead cost of $2,000,000 to $3,000,000, the operating margin shall be fourteen (14) percent to ten (10) percent with a one (1) percent reduction for each $200,000 increase in fee.

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 negotia-

tion 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 **15.** [~~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 **by reference** the General Provisions Attachment as revised **July, 1994** [~~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 **by reference** 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 **16.** [~~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. **For projects requiring approval of a unit of the federal government, notice to proceed shall not be issued until the federal approval is obtained.**

(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 **17.** [~~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 **18.** [~~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 **40-17** [~~61-5~~] as revised **June, 1992** [~~August, 1986~~] or the Change Order form, TC **63-1** [~~63-53~~] revised **March, 1994** [~~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 **19.** [~~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 **20.** [~~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 **21.** [~~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 **or to their designees**. 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 **22.** [~~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: June 7, 1994
FILED WITH LRC: June 8, 1994 at 11 a.m.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(Amended After Hearing)

603 KAR 4:035. Logo signs [~~Advertising devices~~]; placement along fully controlled [~~limited~~] access highways [~~of four (4) or more lanes~~].

RELATES TO: KRS 177.0734 through 177.0738 [~~830 to 177.890~~]
STATUTORY AUTHORITY: KRS 177.0734 through 177.0738 [~~860, 177.865~~]
NECESSITY AND FUNCTION: KRS 177.0734 through 177.0738 [~~860 and 177.865~~] require the Commissioner of Highways to prescribe by administrative regulations reasonable standards for the erection of specific information panels [~~placement of advertising devices~~] within highway rights-of-way to provide directional information for business establishments offering goods and services in the interest of the traveling public. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of specific motorist signing designed to inform motorists where travel related goods and services are available. **Furthermore, as a result of a recommendation of the Governor's Highway Signage and Tourism Task Force, the Federal Highway Administration will allow Kentucky to experiment with a fifth legend logo for tourist activity signing along specified interstate and parkway routes. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of these signs to be used as a demonstration project for the fifth legend logo signs relating to tourist activities. The demonstration project is scheduled to be evaluated in early 1997.**

Section 1. Definitions. (1) "Business location" means a place of business where more than one (1) motorist service is available.

(2) "Business sign" means a separately attached sign mounted on the specific information panel to show the name, brand name or trademark of a qualified motorist service available near the interchange.

(3) "Clear zone" means the area between the edge of the driving-lane of a fully controlled access highway and an imaginary line running parallel to the highway but thirty (30) feet (9.15 meters) away from the highway.

(4) "Combination specific information sign" means a specific information sign with more than one (1) of the services "gas", "food", "lodging", [~~or~~] "camping", **or "tourist activities"** listed on it.

(5) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR **1:101** [~~1:100~~] to administer the specific information signing program in Kentucky. The activities of the contractor shall include but not be limited to marketing, determination of business eligibility, maintenance, erection and removal of the specific information panels and installation and removal of business signs.

(6) "Contract year" means July 1 through the following June 30.

(7) "Cover" means place a protective shield over a business sign to prohibit viewing of the sign.

(8) "Double exit interchange" means a grade-separated crossing of roadways having two (2) mainline off-ramps in one (1) direction to provide access to the crossroad.

(9) "Fully controlled access highway" means a highway, limited to interstate highways and state parkways, that gives preference to through traffic and has access only at selected public roads and that has no at-highway grade crossings or intersections.

(10) "Highway guide sign" means an official highway sign which is erected by the Department of Highways to give directions; to furnish advance notice of the approach to intersections or interchanges; to direct drivers into appropriate lanes; to identify routes, and directions on those routes; to show distances to destinations; to indicate access to general motorist services, rest, scenic and recreational areas; and to provide other information of value to the traveling public.

(11) "Interchange" means a junction of two (2) or more highways by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams.

(12) "Intersection" means a junction of two (2) roads at the same grade level.

(13) "Logo" means a business sign.

(14) "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.

(15) "Primary motorist service" means a business location which gives precedence to one (1) motorist service over any other motorist service available at that business location.

(16) "Ramp sign" means a sign that is placed along the ramp or at the ramp terminal for service facilities which have business logos displayed along the main roadway.

(17) "Secondary motorist service" means one (1) or more motorist services available at a business location which are subordinate to the primary motorist service.

(18) "Single exit interchange" means a grade-separated crossing of roadways having one (1) mainline off-ramp per direction to provide access to the crossroad.

(19) "Specific information panel" means an official sign placed within the highway right-of-way with the words "GAS," "FOOD", "LODGING", [~~OR~~] "CAMPING", **or "TOURIST ACTIVITIES"** or combinations thereof, and space for one (1) or more individual business signs which may be attached to the panel.

(20) **"Tourist activities" means activities or locations that are natural phenomena; historic, cultural, scientific, educational and religious sites; or areas of natural beauty or naturally suited for outdoor recreation. These activities are deemed to be in the interest of the traveling public.**

(21) "Trailblazing sign" means a sign similar to a ramp sign used on nonfully controlled access highways from which a service is available to indicate the direction to the service. [~~The following terms when used in the regulation shall have the following meaning:~~

~~(1) "Specific information panel" means an official sign placed within the highway right-of-way with the words "GAS," "FOOD," "LODGING," or "CAMPING," or combinations thereof, and space for one (1) or more individual business signs which may be attached to the panel.~~

~~(2) "Business sign" means a separately attached sign mounted on the specific information panel to show the brand name or trademark of qualified motorist services available near the interchange.~~

~~(3) "Business location" means a place of business where more than one (1) motorist service is available.~~

~~(4) "Logo" means a distinctive symbol or sign used by a motorist service business as a means of identification of its products or business.~~

~~(5) "Single exit interchange" means a grade separated crossing of roadways having one (1) mainline off ramp per direction to provide access to the crossroad.~~

~~(6) "Double exit interchange" means a grade separated crossing of roadways having two (2) mainline off ramps in one (1) direction to provide access to the crossroad.~~

~~(7) "Intersection" means a junction of two (2) roads at the same grade level.~~

~~(8) "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a~~

~~combination thereof.~~

~~(9) "Primary motorist service" means a business location which gives precedence to one (1) motorist service over any other motorist service available at that business location.~~

~~(10) "Secondary or incidental motorist service" means one (1) or more motorist services available at a business location which are subordinate to the primary motorist service.~~]

Section 2. General Provisions. (1) The Commissioner, Department of Highways, shall authorize the placement of specific [~~motorist service~~] information panels with business signs within the right-of-way of fully controlled [~~limited~~] access highways [~~of four (4) or more travel lanes in conformance with the Federal Highway Administration's (FHWA's) adopted standards as contained in Federal Highway Program Manual (FHPM) 6-8-3-8~~].

(2) The Department of Highways shall control the erection and maintenance of [~~said~~] panels and signs in accordance with the "Manual on Uniform Traffic Control Devices" (MUTCD) as incorporated by reference in 603 KAR 5:050 and with the provisions of this administrative regulation. [~~the following criteria:~~]

(3) The Department of Highways shall demonstrate the use of the "tourist activities" specific service sign on the following highways:

(a) I-24 along its entire length;

(b) I-65 from the Tennessee state line through Exit 94 north of Elizabethtown;

(c) I-64 from Shelbyville to Ashland; and

(d) William H. Natcher Parkway, formerly the Green River Parkway, along its entire length.

Section 3. Application and Contracts for Specific Information Signs. (1) Application for a business to place a logo **relating to gas, food, lodging or camping** on a specific information panel shall be on "Application for Highway Logo Signing" forms prepared by the Kentucky Logo Sign Group, Inc. in November 1993. This form is incorporated by reference as a part of this administrative regulation.

(2) **Application for a business to place a logo relating to tourist activities on a specific information panel shall be on "Application for Highway Tourist Activity Logo Signing" forms prepared by the Kentucky Logo Sign Group, Inc., in May, 1994. This form is incorporated by reference as a part of this administrative regulation.**

(3) The notice by the business to the Department of Highways' contractor of the number, type and placement of each logo sign shall be on "Logo Program Billing Information" forms prepared by the Kentucky Logo Sign Group, Inc. in **May, 1994** [~~November, 1993~~]. This form is incorporated by reference as a part of this administrative regulation.

(4) [~~(3)~~] The contract to be entered into between the participating business and the Department of Highways' contractor shall be the "Highway Logo Program Agreement" form prepared by the Kentucky Logo Sign Group, Inc. in **May, 1994** [~~November, 1993~~]. Addenda to this form may be included in the contract where appropriate. This form is incorporated by reference as a part of this administrative regulation.

(5) [~~(4)~~] All forms incorporated by reference as a part of this administrative regulation may be viewed, copied or obtained from the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. Its telephone number is 1-800-469-5646. The forms may also be viewed, copied, or obtained from the Division of Traffic, 501 High Street, Mail Code 1-3, Frankfort, Kentucky 40622. Its telephone number is (502) 564-3020. Its hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.

Section 4. Location and Erection of Specific Information Panels. (1) A specific information panel bearing separately attached business signs shall not be erected less than 800 feet (244 meters) [~~between the previous interchange and 800 feet~~] in advance of the exit direction sign at the interchange where motorist services are available.

(2) Spacing between each specific information panel shall [~~also~~] be at a minimum of 800 feet (244 meters) and shall be spaced at least 800 feet (244 meters) from any [~~not conflict or interfere with~~] other highway guide signs in existence or proposed for that area.

(3) A specific information panel shall not be erected if there is insufficient space between the previous interchange and the interchange where the motorist services are available for the required highway guide signs and a specific information panel.

[~~(2) Business signs separately attached on a specific information panel shall show the logo, name, brand, and/or trademark of motorist services conveniently accessible from the interchange. All business signs shall be furnished to the Department of Highways by the business at no cost to the department and shall be manufactured to the standard specifications of the department. An exception to this subsection, subsection (17) of this section and Section 3(8) of this regulation is any business sign which must be replaced as a result of a change in regulations and policy may be provided by the Department of Highways at no cost to the business.~~]

(4) A [~~(3) No~~] specific information panel shall not [~~s may~~] be erected at an interchange or intersection which intersects another limited access facility.

(5) A specific information panel shall not be erected [~~nor~~] at any interchange or intersection which does not have a convenient reentry in the same [~~desired~~] direction of travel.

(6)(a) Not more than one (1) specific information panel for "GAS," "FOOD," "LODGING," [~~or~~] "CAMPING"**, or "TOURIST ACTIVITIES"** shall be erected in each direction for an interchange or intersection.

(b) **Not more than four (4) specific information panels shall be erected in one (1) direction of travel for an interchange or intersection.**

(c) In one (1) [~~the~~] direction of travel, the successive panels shall be erected in the order of **"TOURIST ACTIVITIES" or** [~~for~~] "CAMPING," "LODGING," "FOOD," and "GAS" unless a combination specific information sign is erected **in accordance with Section 5(10) or (11) of this administrative regulation** [~~in that order~~].

(d) [~~(c)~~] At interchanges with insufficient space available in a single direction for four (4) specific information panels, **or at interchanges with requests for all five (5) type services,** service signing preference shall be in the order "gas", "food", "lodging", [~~and~~] "camping"**, and "tourist activities"**, with "gas" having the highest priority.

[~~(4) Specific information panels may be permitted inside urban areas where interchange spacing is a minimum of two (2) miles and where the roadside development or terrain is such that motorist services are not readily identifiable from the traveled way for a reasonable distance in advance of an exit.~~]

(7) The specific information panels shall be located to:

(a) Take advantage of natural terrain;

(b) Have the least impact on the scenic environment; and

(c) Avoid visual conflict with other signs within the highway right-of-way.

(8) Unprotected sign panel supports located within the clear zone shall be of a breakaway design.

Section 5. Interchange Specific Information Panel Composition. (1) A specific information panel shall have a blue background with a white reflectorized border.

(2) The directional arrows and all letters and numbers used in the name of the type of service and the directional legend shall be white and reflectorized.

(3) All letters used in the name of service and the directional legend shall be ten (10)-inch (254-millimeter) capital letters.

(4) All numbers shall be ten (10) inches (254 millimeters) in height.

(5) The size of the specific information panel shall comply with the requirements of the MUTCD.

(6) An average measured retroreflectivity of fifty (50) percent or greater shall be maintained on each specific information panel.

(7)(a) [~~(5)~~] For single exit interchanges, a standard full-size specific information panel shall accommodate a maximum of six (6) business signs. [~~for "GAS," and four (4) business signs for "FOOD," "LODGING," and "CAMPING."~~]

(b) In instances when the number of businesses does not warrant a full-size panel, a half-size or combination panel may be used.

(8) If [~~Where~~] service facilities are not visible from a ramp terminal, supplemental "GAS," "FOOD," "LODGING," **[~~or~~]** "CAMPING" **or "TOURIST ACTIVITIES"** logos shall be placed along the ramp or at the ramp terminal with a directional arrow and mileage (kilometers) to the service. [~~In exceptional cases, additional business signs may be considered by the Department of Highways.~~]

(9)(a) [~~(6)~~] For double exit interchanges, the specific information panel shall consist of two (2) sections, one (1) for each exit, mounted on the same base.

(b) The top section shall display business signs for the first exit and the lower section shall display business signs for the second exit.

(c) Each section [~~This panel~~] shall accommodate a maximum of three (3) business signs for each service [~~"GAS," and two (2) business signs for "FOOD," "LODGING," and "CAMPING"~~] per exit.

(d) If [~~Where~~] a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific information panel [~~sign~~] may be omitted or a single exit interchange sign may be used. [~~In exceptional cases, additional business signs may be considered by the Department of Highways.~~]

(10) [~~In areas where not more than four (4) qualified businesses are available for each of two (2) or more types of services:~~

~~(a)~~] Business signs for two (2) types of services may be displayed on the same combination specific information sign **under the following conditions:**

(a) For the two (2) types of services there is a total of not more than six (6) qualified businesses at the interchange;

(b) Up to three (3) business signs may be displayed for each **type** of service **[~~shall be displayed~~]** in combination on a panel;

(c) If four (4) business signs are displayed for one (1) type of service on a combination specific information sign, no more than two (2) business signs for the other type of service shall be displayed on the combination specific information sign; and

(d) The name of each type of service shall be displayed above its respective business signs.

(e) If tourist activities is one (1) of the types of services to be combined, it shall only be combined with camping.

(11) Business signs shall not be combined on a panel as described in subsection (10) of this section if:

(a) It is anticipated that additional service businesses shall become available in the near future; or

(b) It becomes necessary to display **more than a total of six (6) [~~a fourth or fifth~~]** business signs for **the two (2) [~~a~~]** types of services displayed in combination;

(12)(a) Except at unnumbered exits, the exit number shall be displayed above the names of the types of services; and

(b) At unnumbered exits, the legend "NEXT RIGHT" or "NEXT LEFT" shall be displayed above the names of the types of services.

[~~(7) Criteria for installation of specific information panels with intersections at grade is significantly different. Provisions of distance from the crossroad, size of information panels and business signs, number of business signs per panel, distance between panels, and selection of businesses for qualification for business signs shall conform to standards and specifications as described in FHPM 6-8-3-8 and the state MUTCD.~~]

Section 6. Ramp Signs. (1) At single-exit interchanges, exit ramp signs shall be installed except that the logos for facilities visible from the ramp terminal may be omitted.

(2) Business signs on ramp signs shall be duplicates of the corresponding logos installed along the main roadway, but reduced in size.

(3) Ramp signs shall include distances to the service facilities. Directions shall be indicated by arrows.

(4) Ramp signing may be used on ramps at double-exit interchanges.

Section 7. Business Signs. (1) Each business sign shall have a legend and border. However, if the business identification symbols or trademarks are used alone for a business sign, the border may be omitted.

(2) Each business sign on the specific information panel shall be contained within a forty-eight (48)-inch (1219.2-millimeter) wide and thirty-six (36)-inch (914.4-millimeter) high rectangular background area which includes the border, if required.

(3) The principal legend shall be legible from the main traveled way of the highway under normal driving conditions.

(4) A symbol or trademark shall be reproduced in the colors and general shape consistent with customary use and an integral legend shall be in proportionate size.

(5) A message, symbol or trademark which resembles any official traffic control device shall be prohibited.

(6) The vertical and horizontal spacing between business signs on specific information panels shall not exceed eight (8) inches (203.2 millimeters) and twelve (12) inches (304.8 millimeters), respectively.

(7) The required reflectivity, material composition, and adhesiveness of the business signs are set forth in the "LOGO PROGRAM SPECIFICATIONS" form 99-133 last revised by the Kentucky Transportation Cabinet in April, 1991. This form is incorporated by reference as a part of this administrative regulation.

(8) If a business ceases to exist or is not in operation for thirty (30) days [~~any reason, in accordance with the standards under which a business sign was placed on a specific information panel~~], the business sign shall be immediately covered or removed as circumstances of each closing or cessation of business dictate.

(9) Any business which operates on a seasonal basis shall make provisions for removing or covering business signs during the off season. Businesses of this type shall notify the Department of Highways' contractor in writing thirty (30) days before the [~~such~~] opening or [~~and~~] closing occurs.

(10) In the absence of an official trademark or logo, the official name as indicated in partnership agreements, incorporation documents, or otherwise documented may be substituted on the business sign.

(11)(a) Descriptive advertising words, phrases or slogans shall not be allowed on a business sign; i.e., "Open 24 Hours," "Joe's 24-Hour Market," "Free Coffee," "Credit Cards Accepted," etc.

(b) Descriptive words which are part of the official name of the business shall be permitted on a business sign; i.e., "hotel," "motel," "inn," "lodge," "restaurant," "cafe," "cafeteria," "diner," or others with a similar meaning.

(c) The word "Diesel" on a "GAS" business sign shall be permitted.

(12) [~~Not more than one (1) business with a particular name, business symbol, brand, trademark or logo shall be permitted on one (1) specific information panel.~~

~~(13)~~] If there is more than one (1) eligible business at an interchange with the same business symbol, brand, trademark or logo, more than one (1) business symbol, brand, trademark or logo with the same design may be placed on a **specific information panel or on a** ramp sign to indicate the distances to the individual businesses.

Section 8. Business Criteria and Eligibility. (1) In [~~(10) Only one (1) business sign pertaining to a business location shall be permitted~~

~~in each direction of travel in advance of an interchange or intersection; except that in~~] the absence of adequate motorist service business signs to fill a specific information panel with primary motorist service signs, secondary [~~or incidental~~] motorist service business signs may be allowed on those unfilled panels.

(2) If [~~(11) At a business location where more than one (1) motorist service is available, only the primary motorist service shall be considered for the purpose of permitting business signs on a specific information panel; except that if~~] a space is not available for the primary motorist service, a secondary [~~or incidental~~] motorist service may be considered if space is available on the [a] specific information panel for that type of service [~~sign~~].

(3) [~~(12)~~] Secondary [~~or incidental~~] motorist services shall not be considered until all businesses with a primary motorist service have been allowed an opportunity to have their business signs placed on the specific information panel pertaining to that type motorist service.

(4) [~~(13)~~] In selecting secondary [~~or incidental~~] services, the same criteria as required for primary motorist services shall be used to determine their qualification for a business sign.

(5)(a) A business [~~(14) Only these businesses~~] within a three (3) mile (4.83 kilometer) limit in any direction from the centerline of a fully controlled [~~four (4) lane limited~~] access road interchange shall have first priority [~~be eligible~~] to place signs on information panels.

(b) [~~except that,~~] If within that three (3) mile (4.83) kilometer) limit and adequate number of services of the type being considered are not available, second priority shall be an additional three (3) miles (4.83) kilometers). [~~the Commissioner of Highways may extend the limit in three (3) mile increments until services of the type being considered, or fifteen (15) miles are reached.~~]

(c) Priority shall be extended in three (3) mile (4.83 kilometer) increments until an adequate number of services of the type being considered are available or fifteen (15) miles (24.15 kilometers) is reached.

(d) A business further than fifteen (15) miles (24.15 kilometers) from the interchange shall not be eligible to qualify for placement of a business sign. However, any business at a distance greater than fifteen (15) miles (24.15 kilometers) from the interchange with a business sign in place on January 1, 1994, may continue to display the business sign until the business fails to meet another criterion of this administrative regulation.

[~~(15) In the absence of exit number guide signs, the words "Next Right/Left" shall be used.~~]

(6) [~~(16)~~] A business with one (1) or more advertising devices [~~signs~~] in violation of KRS 177.830 through 177.890 on any route controlled by this statute or in violation of 603 KAR 3:080 [~~and regulations pertaining thereto,~~] shall not be eligible to qualify for a business sign until all violations have been removed.

(7) A business with one (1) or more advertisements on signs which are in violation of KRS 177.830 through 177.890 or 603 KAR 3:080 shall not be eligible to qualify for a business sign until all violations have been removed.

[~~(17) In the absence of an official trademark or logo, the official name as indicated in partnership agreements, incorporation documents, or otherwise documented may be substituted. Descriptive advertising words, phrases or slogans shall not be allowed on a business sign; i.e., "Open 24 Hours," "Joe's 24 Hour Market," "Free Coffee," "Credit Cards Accepted," etc. Only the following descriptive words which are part of the official name will be permitted: "hotel," "motel," "inn," "lodge," "restaurant," "cafe," "cafeteria," "diner," or others with a similar meaning. The only exception to this provision is the word "Diesel" on a "GAS" business sign.~~

~~(18) In no case shall more than one (1) business with the same name, trademark or logo be permitted on the same specific information panel.~~]

(8) An activity which is identified at an interchange by a guide sign pursuant to Chapter 2F of the "Manual on Uniform Traffic Control Devices":

(a) May also be identified with a "TOURIST ACTIVITIES" logo;

(b) Shall have a lower priority for eligibility than any other activity which is eligible for a "TOURIST ACTIVITIES" logo.

Section 9. [~~8.~~] Requirements for Obtaining Business Signs. A motorist service business located at, or conveniently accessible from, an interchange or intersection shall be eligible for placement of a business sign on a specific information panel if it qualifies under the following conditions:

(1) Each business shall offer written assurance that it conforms with all applicable laws and administrative regulations concerning the provision of public accommodations with regard to race, religion, color, sex, age, disability [~~handicap~~], or national origin.

(2) To qualify for a "GAS" business sign, a business shall:

(a) [~~must~~] Be in operation seven (7) days a week, and continuously open for sixteen (16) hours a day; and[~~, as a minimum, have~~]

(b) Have motor vehicle fuel, oil, water, drinking water, restroom facilities, and a telephone [~~available~~].

(3) To qualify for a "FOOD" business sign, a business shall:

(a) [~~must~~] Be licensed in accordance with KRS Chapter 219;

(b) [~~or approved by the appropriate state and/or local regulatory agency, and, as a minimum,~~] Be in continuous operation to serve three (3) meals a day, seven (7) days a week; [~~, sixteen (16) hours a day beginning no later than 7 a.m.,~~]

(c) Have a [~~reasonable~~] seating capacity for a minimum of six (6) guests at sit-down, eat-in service; and

(d) Have a telephone [~~available~~].

(4) To qualify for a "LODGING" business sign, a facility shall:

(a) [~~must~~] Be licensed in accordance with KRS Chapter 219; [~~or approved by the appropriate state and/or local regulatory agency,~~]

(b) Have a minimum of two (2) rooms available for [~~adequate~~] sleeping accommodations; and

(c) Have a [~~public~~] telephone.

(5) To qualify for a "CAMPING" business sign, a facility shall:

(a) [~~must~~] Be licensed in accordance with KRS Chapter 219; and [~~or approved by the appropriate state and/or local regulatory agency,~~]

(b) Have a minimum of ten (10) [~~adequate~~] parking accommodations which have [~~,~~] modern sanitary facilities, and drinking water.

(6) To qualify for a "TOURIST ACTIVITIES" business sign, a facility shall:

(a) Be an activity or location that is one (1) or more of the following:

1. Natural phenomena;

2. Historic site;

3. Cultural site;

4. Scientific site;

5. Educational site;

6. Religious site;

7. Area of natural beauty; or

8. Area naturally suited for outdoor recreation.

(b) Maintain regular hours for that type of establishment;

(c) Be licensed in accordance with KRS Chapter 219, if applicable;

(d) Have restroom facilities;

(e) Have drinking water available;

(f) Have an on-premise or nearby public telephone; and

(g) Have adequate parking to accommodate its traffic with a minimum of ten (10) spaces.

(7)(a) Qualifying businesses nearest to the interchange or intersection shall receive preference in the selection process.

(b) A qualifying food business which is open sixteen (16) hours a day beginning no later than 7 a.m. each day shall have priority over another qualifying food business which does not provide service for this entire time period. Distance from the interchange shall only be considered in determining priority after the business hours have been considered.

(c) If a new qualifying business comes into existence nearer the

interchange or intersection than one which already has a business sign displayed on a fully utilized panel, the new business may have its business sign displayed at the beginning of the next contract year. The [and the] business farthest from the interchange shall [will] have its business sign removed at the end of the contract year if the closer business has applied to have its business sign displayed and has been approved for the program.

(d) A qualifying business or activity which has been identified on an official highway guide sign shall have a lower priority to have its business sign displayed than any other qualifying business or activity.

(8) [(7)](a) The qualifying business shall pay to the department's contractor an annual fee of $600, in advance, for each [mainline] business sign placed on the fully controlled access highway for gas, food, and lodging **and tourist activities** and $300 for camping.

(b) The annual fee for the first year shall [must] accompany the initial application.

(c) **If the first lease is for less than one (1) year,** the first year's annual fee **shall [may]** be prorated on a monthly basis with each portion of a month the business sign is up requiring payment of one-twelfth (1/12) of the fee.

(d) The yearly renewal fee shall be due forty-five (45) [thirty (30)] days prior to the annual renewal date.

(e) The payment of this fee guarantees that the business sign will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any [s ne] part of their agreement with the Department of Highways' contractor.

(9) [(8)] If a sign or signs for a business is [must be] removed **or covered** for any reason, a fee of $100 shall be charged for the reinstallation **or uncovering** of the sign [such sign(s)] for each business at each interchange.

(10) [(9)] [Business sign logos shall be delivered to the appropriate Highway District within sixty (60) days of notification of approval by the Department of Highways. Failure to deliver the business sign within this specified time period may result in the forfeiture of the fee, and another business or businesses may be given the opportunity to qualify for the vacated space.

(10)] The qualifying business shall be responsible for damages to business signs caused by acts of vandalism or natural causes requiring repair or replacement of business signs.

(11) [(10)] A [No] business sign shall not be displayed which:

(a) Would [will] misinform the traveling public; or

(b) [which] Is unsightly, badly faded, or in a state of dilapidation. In these [such] instances the business shall provide a new or renovated business sign.

Section 10. Trailblazing Signs For Campgrounds. (1) Only those campgrounds within fifteen (15) miles (24.15 kilometers) of the centerline of a fully controlled access highway shall be eligible for new trailblazing signs.

(2) Only one (1) specific service trailblazing sign shall be erected for each business with a logo. This sign shall be placed a minimum of 300 feet (91.5 meters) in advance of the intersection from which the camping service is available.

(3) A trailblazing sign shall not be erected or displayed if the business is visible from a point on the fully controlled access highway within 300 feet (91.5 meters) prior to intersection.

Section 11. [4.] Measurements. (1) Measurements in the selection of qualified businesses for business signs shall be from the juncture of the center line, measured between the center edges of the main traveled way of the fully controlled [a four (4) lane limited] access road and the center line of a nonlimited access crossroad.

(2) Selection of businesses for display of business signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad or public thoroughfare to the particular motorist service.

[Section 5. Application forms, criteria for selection of businesses with motorist services, standards of quality of business logos and any other information relative to the activities and functions necessary and authorized by KRS 177.860, 177.865 and this regulation, to implement and administer such law and regulations may be obtained by writing the Transportation Cabinet, Frankfort, Kentucky 40622.]

Section 12. [6. Revocation of] Business Sign Contract. (1)(a) A business sign contract between a participating business and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of a business sign.

(b) Each business sign and contract shall be subject to review by the Transportation Cabinet at any time.

(c) Failure to comply with any of the requirements [regulations] set forth herein including nonpayment by the participating business shall be cause for the revocation of a business sign contract.

(d) If the contract is revoked for cause, the prepaid fees for a contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that a contract, business, or business sign does not comply with the requirements of this administrative regulation, [In such instances] the Department of Highways' contractor shall notify the business in writing of the violation[(s)].

(3) If the business fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the [such] notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the [any such] business signs.

Section 13. [7.] Appeal to the Commissioner of Highways for Exemption. (1)The Commissioner of Highways may grant an exemption to a business from the necessity of complying with any of the requirements set forth in this administrative regulation provided:

(a) It is determined by the commissioner that the [such] exemption is in the public interest;

(b) [and also provided] The business conforms to the Federal Highway Administration standards for specific information signs; and [provided further that a]

(c) That business which conforms to all the requirements set forth in this administrative regulation [section] shall be given a preference over a business not conforming to all of the [said] requirements in qualifying for placement of a business sign on a specific information panel.

(2) Any request for an exemption by a business to the Commissioner of Highways shall be filed in the form of an appeal as prescribed for in Section 15 [8] of this administrative regulation.

Section 14. **Encroachment Permits.** The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new specific service sign proposed to be erected or removed from state-owned right-of-way.

Section 15. [8.] Appeal of Department of Highways Action. (1) Any business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative [these rules and] regulation[s] may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for the formal hearing shall:

(a) Be filed in writing with the Commissioner, Department of Highways, 501 High Street, Frankfort, Kentucky 40622; and

(b) [shall] Set forth the nature of the complaint and the grounds for the appeal.

(3) Upon receipt of a request for a hearing, the general counsel of the Transportation Cabinet shall assign the matter to a hearing examiner.

(4) The hearing examiner shall schedule a date for the hearing as soon as the schedules of the parties needed at the hearing allow

provided that the time shall not exceed sixty (60) days after receipt of the request for hearing.

(5) The hearing shall be recorded.

(6) The rules of evidence shall not apply.

(7)(a) The hearing examiner shall prepare and submit his report with a recommendation within sixty (60) days of the hearing.

(b) The report and recommendation shall be submitted to the Commissioner of Highways with copies served to the party which requested the hearing.

(8) Any party to the hearing may within twenty (20) days file with the Commissioner of Highways his exceptions to the report and recommendation of the hearing examiner.

(9) The commissioner shall within ten (10) days of receiving the exceptions and within thirty (30) days of receiving the report and recommendation of the hearing examiner issue an official order setting forth the final action of the Department of Highways.

J.M. YOWELL, P.E., State Highway Engineer
JERRY ANGLIN, Deputy Secretary & Highway Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: June 7, 1994
FILED WITH LRC: June 9, 1994 at 10 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 15, 1994

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 3:005. Lender participation.

RELATES TO: KRS 164.740(6), (16), 164.748(5), (13), 20 USC 1078(B)(1)(U), 1085(d), 34 CFR 682.401(b)(17)(i)(A), (B) [~~(10)(A)~~]

STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 20 USC 1078(B)(1)(U), 34 CFR 401(b)(17)(i)(A), (B) [~~(10)(A)~~]

NECESSITY AND FUNCTION: KRS 164.748(1) authorizes the board to "provide loan guarantees, upon such terms and conditions as the board may prescribe within the limitations provided by KRS 164.740 to 164.785, and the federal act in respect of loans to eligible students." KRS 164.748(5) authorizes the board to "enter into contracts with eligible lenders approved by the state to lend moneys, upon such terms and conditions as may be agreed upon between the authority and the eligible lender, to provide for the administration of student financial assistance programs, including, but not by way of limitation, the authority's program of insured student loans." The authority is the designated guarantor for the state of Kentucky under the Robert T. Stafford Federal Student Loan Program, the Federal Plus Program, the Federal Consolidation Loan Program, and the Federal Supplemental Loans to Students Program pursuant to the federal act of 1965, as amended (20 USC 1071 et seq.) and agreements with the secretary. Section 428(b)(1)(U) of the federal act requires the authority to provide for the eligibility of all lenders described in 435(d)(1) of the federal act under reasonable criteria. 34 CFR 682.401(b)(17) [~~(10)~~] (A) requires the authority to establish and disseminate the criteria for lender eligibility. This regulation sets forth the criteria for approval of lender participation and execution of a contract of insurance with eligible lenders. This amendment is necessary to eliminate a geographic limitation on organizations that may participate as lenders, and eliminate definitions now contained in 11 KAR 3:001.

Section 1. [~~Definitions. (1) The definition of "authority" is governed by KRS 164.740(1).~~

~~(2) The definition of "board" is governed by KRS 164.740(2).~~

~~(3) The definition of "eligible lender" is governed by KRS 164.740(6).~~

~~(4) The definition of "federal act" is governed by KRS 164.740(9).~~

~~(5) The definition of "insured student loan" is governed by KRS 164.740(12).~~

~~(6) The definition of "loan guarantee" is governed by KRS 164.740(14).~~

~~(7) The definition of "participating lender" is governed by KRS 164.740(16).~~

~~(8) The definition of "secretary" is governed by KRS 164.740(20).~~

~~Section 2.~~] (1) In order to be considered for participation in the authority's insured student loan program, a lender shall submit to the authority, if requested, information sufficient to enable the authority to determine the eligibility of the lender and whether it meets the following criteria. In determining whether to enter into a contract of insurance with an applicant, and, if so, what the terms of the contract will be, the authority considers:

(a) Whether the applicant is an organization described in, and not disqualified pursuant to, 435(d) of the federal act (20 USC §1085(d));

(b) Whether the applicant is capable of complying with federal regulations and 11 KAR Chapter 3 as they apply to lenders participating in the authority's insured student loan program;

(c) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting insured student loans;

(d) Whether the applicant has had prior experience with a similar federal, state, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(e) The financial resources of the applicant; and

(f) In the case of a school that is seeking approval as a lender, whether it is accredited.

Section 2. [~~3.~~] (1) The authority may enter into a contract of insurance with an eligible lender approved by the secretary [~~that is located in any state~~], if the lender is:

(a) Capable of complying with federal regulations and 11 KAR Chapter 3 as they apply to lenders participating in the authority's insured student loan program;

(b) Capable of implementing adequate procedures for making, servicing, and collecting insured student loans; and

(c) Located in any state [~~and, except for the exclusive purpose of holding insured student loans acquired by transfer from another eligible lender, the organization directly or through a subsidiary maintains an office within Kentucky in which it offers the full range of financial services (in addition to insured student loans) that cause the lender to be an organization described in 435(d) of the federal act~~].

(2) The authority shall issue loan guarantees for lenders under contracts described in Section 4 of this administrative regulation without regard to the residency of the borrower or the state in which the educational institution is located.

(3) In the event that loan guarantees are issued pursuant to subsection (2) of this section, and none of the principal parties (lender, educational institution or borrower) are located in the Commonwealth, then, for purposes of the federal act, the authority shall deem the state in which the participating lender is located to be the area served by the authority.

Section 4. The Contract of Insurance. (1) In order to participate, an eligible lender shall execute a contract of insurance with the authority. No loan guarantee shall be issued by the authority unless it is covered by such an agreement.

(2) In general, under a contract of insurance, the participating lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender. In return the authority agrees to insure each eligible loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The authority may include in a contract of insurance a limit on the duration of the contract and the number or amount of loans the participating lender may make or hold.

(4) Except as otherwise approved by the authority, a contract of insurance with a school lender limits the loans made by that school lender that will be covered by the loan guarantee to those loans made to students, or to parents borrowing on behalf of students, who are:

(a) In attendance at that school;

(b) In attendance at other schools under the same ownership as that school; or

(c) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the authority considers appropriate for loan guarantees.

(5) A limit imposed under subsection (4) of this section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees of those other schools may be imposed on a school-by-school basis.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: May 27, 1994

FILED WITH LRC: June 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, July 21, 1994 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Friday, July 15, 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. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: Currently Kentucky Higher Education Assistance Authority (KHEAA) has 134 eligible lenders participating in its Federal Family Education Loan Program compared to 162 eligible lenders participating during fiscal year 1993. Additional operational and paperwork requirements imposed on lenders through amendments to the Higher Education Act, along with decreased revenues, have led to the withdrawal from the program of many of the small and midsize lenders. Through this amendment to the regulation, KHEAA may attract other eligible lenders to the program from the approximately 7,537 lenders participating in the Federal Family Education Loan Program nationwide. During fiscal year 1994 through April 30, 1994, KHEAA's Federal Family Education Loan Program served a need for approximately 48,631 postsecondary students attending 574 postsecondary institutions across the nation and in a number of eligible foreign institutions. The dollar volume of loans guaranteed during this period was $169,348,604.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings to participating lenders or students. The amendment merely permits more lenders that are eligible under the Higher Education Act to participate in KHEAA's program.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The loan insurance industry has seen a dramatic increase in competition among the states and private nonprofit guarantee agencies over the past decade. Changes resulting from interstate banking have accelerated that competition. As the federal government begins implementation of its direct loan program, decreasing the overall loan volume for guarantee agencies and causing many lenders to withdraw from the loan insurance program, KHEAA's volume of loan guarantees will inevitably decrease without the proposed change. With the decrease in volume comes a corresponding decrease in cost effectiveness of the program and possibly the quality of service. At the same time, the majority of Kentucky postsecondary educational institutions will not be involved in federal direct lending, at least during the early years, and will still need access to the Federal Family Education Loan Program and eligible lenders. Additionally, those schools involved in direct lending may opt to have their previous borrowers continue in the Federal Family Education Loan Program as opposed to the Federal Direct Student Loan Program. The proposed change to the regulation will allow KHEAA to continue to provide access to Federal Family Education Loans for Kentucky residents and out-of-state residents attending Kentucky institutions, as well as allow access to new markets (lenders, schools, and students) to maintain the cost effectiveness and quality of services currently associated with KHEAA's program.

(b) Reporting and paperwork requirements: The amendment merely permits more lenders that are eligible under the Higher Education Act to participate in KHEAA's program. Therefore, the amendment will have no effect on the reporting and paperwork requirements for participating lenders, students (borrowers) or schools.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As the federal government begins implementation of its direct loan program, decreasing the overall loan volume for guarantee agencies and causing many lenders to withdraw from the loan insurance program, KHEAA's volume of loan guarantees will inevitably decrease without the proposed change. With the decrease in volume comes a corresponding decrease in cost effectiveness of the program and possibly the quality of service. The proposed change to the regulation will allow KHEAA to continue to provide access to Federal Family Education Loans for Kentucky residents and out-of-state residents attending Kentucky institutions, as well as allow access to new markets (lenders, schools, and students) to maintain the cost effectiveness and quality of services currently associated with KHEAA's program and achieve savings through economies of scale. KHEAA may increase its viability, or at a minimum maintain the status quo, by providing access to residents of other states where such access may be limited or nonexistent.

2. Continuing costs or savings: See (2)(a)#1 above.

3. Additional factors increasing or decreasing costs: Additionally, through this proposed amendment, KHEAA will be able to provide broader guarantee services to multistate lending institutions who may desire to limit their business to one or a limited number of guarantors.

(b) Reporting and paperwork requirements: None anticipated. The amendment merely permits more lenders that are eligible under the Higher Education Act to participate in KHEAA's program.

(3) Assessment of anticipated effect on state and local revenues: The proposed amendment will not increase or decrease state or local revenues. However, it is anticipated that the proposed amendment will permit KHEAA to increase its viability, or at a minimum maintain the status quo, by providing access to residents of other states where such access may be limited or nonexistent. The continued financial viability of KHEAA as a loan guarantor is crucial to KHEAA's ability to remain self-sustaining as an agency and administer other student financial assistance programs for Kentucky residents without general fund appropriations for administrative costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: KHEAA anticipates it would not be able to continue to provide access to the Federal Family Education Loan Program for Kentucky residents and out-of-state residents attending Kentucky schools without the proposed change.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

Tiering: Was tiering applied? No. Tiering was not applied, because the regulation sets uniform standards for lender approval to participate in KHEAA's loan insurance program. Eligibility of lenders is generally governed by the Higher Education Act. The standards set for approval to participate are the minimum standards for all lenders necessary to protect program integrity while maximizing the number of lenders who can participate. Disparate treatment of any person or entity affected by 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. Cite the federal statute or regulation constituting the federal mandate. 20 USC §1078(B)(1)(U) and §1085(d) of the Higher Education Act of 1965 as amended by of PL 102-235 (July 23, 1992) and 34 CFR §682.200 and §682.401(b)(17)(i)(A) and (B).

2. State in sufficient detail the state compliance standards: This regulation provides for approval of participation of qualified lenders in the authority's insured student loan program if the lender is eligible under the Higher Education Act of 1965 as amended and demonstrates the administrative capability and financial resources to make and service insured student loans and comply with the federal and state program regulations and agreements.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute, 20 USC §1078(B)(1)(U) provides that the student loan insurance program administered by a guarantee agency such as KHEAA shall provide for the eligibility of all lenders meeting the federal eligibility requirements prescribed in 20 USC §1085(d), and 34 CFR and §682.401(b)(17)(i)(A) and (B) provides that the student loan insurance program administered by a guarantee agency such as KHEAA shall provide for reasonable standards for participation by those eligible lenders.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. This regulation does not impose standards for eligibility or participation by lenders that are stricter than the federal mandate.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 3:100 Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (15), (19) 164.753(2), 34 CFR 682.410(b)(10), 20 USC 1095a [~~,1~~]

STATUTORY AUTHORITY: KRS 164.748(4), (15), 164.753(2), 20 USC 1095(a) [~~,1~~]

NECESSITY AND FUNCTION: Pursuant to KRS 164.744(1) and 164.748(2) the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with Title IV, Part B of the federal act. KRS 164.748(10) empowers the authority to collect from borrowers loans on which the authority has met its guarantee obligation. Section 605 of PL 102-164 (20 USC 1095-1) permits a student loan guarantee agency to garnish the wages of a borrower to recover on a loan guaranteed pursuant to Title IV, Part B of the federal act, notwithstanding any provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. This administrative regulation is necessary to establish the procedures for implementing such wage garnishment in accordance with requirements of the federal act. This amendment is necessary to simplify and clarify aspects of the delivery of notices and the hearing procedure [~~and eliminate definitions that now appear in 11 KAR 3:001~~].

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order conforms to the requirements of this section. This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(2) No order for withholding of disposable pay shall be issued under this section nor become effective less than thirty (30) days after the authority provides to the debtor by personal service or [~~certified~~] mail, addressed to the debtor at the residence or employment location last known to the authority [~~return receipt requested~~], a written notice. The notice shall include at least the following information:

(a) The name and address of the debtor;

(b) The amount of the debt determined by the authority to be due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue and order for withholding of disposable pay and that the debtor's earnings and property are subject to both administrative and judicial enforcement;

(e) A statement of the right to dispute the existence or amount of the debt or the terms of any prior repayment schedule (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay will be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(3) Notwithstanding subsection (1) of this section, no amount shall be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(4) Establishment of a written repayment schedule in accordance with subsection (2)(g) of this section shall be deemed, for purposes of subsection (2)(e) of this section, conclusive acknowledgement by the debtor of the existence and amount of debt agreed to be paid.

(5) Service of the notice described in subsection (2) of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice may otherwise be evidenced by affidavit of an individual executing personal service or a delivery receipt.

Section 2. (1) A hearing shall be provided if the debtor, on or before the 15th day following the date of service [~~(as evidenced by the affidavit of an individual executing personal service or the date of the postal receipt for the notice)~~] of the notice described in Section 1 of this administrative regulation, files with the authority a written request for such hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing. If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing. A hearing officer, appointed by the authority (who shall not be an individual under the supervision or

control of the head of the authority, except that nothing contained in this sentence shall preclude the appointment of an administrative law judge), shall conduct dispute hearings in Franklin County or any other location agreed by the parties. In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(2) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt.

(3) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the authority board to review the decision in accordance with 11 KAR 4:030, which shall decide the dispute upon the hearing record. Where the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay may be issued forthwith by the authority, which shall, if the debtor's appeal is successful, return to the debtor any money received pursuant to the withholding order.

(4) The remedies provided in this section shall not preclude the use of other judicial or administrative remedies available to the authority under the laws of the Commonwealth or federal laws and nothing contained in this section shall be construed to stay the use of other remedies.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) Not less than ten (10) days prior to the scheduled in-person or telephonic hearing, the parties shall exchange and submit to the hearing officer a list of the names, addresses, and phone numbers of any witnesses expected to testify at the hearing and a brief summary of the testimony of each witness expected to be introduced into evidence. Upon request of either party at any time, the hearing officer may issue subpoena for production of documents or attendance of witnesses.

(b) Not more than ten (10) days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority and the hearing officer, a written statement specifically stating the basis of dispute and a legible copy of any documentation that the debtor intends to offer as evidence. Additional time for compliance with this requirement may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in Section 3(2) of this administrative regulation. If the debtor requests a hearing, but the debtor's written statement and supporting documentation considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 4 of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 2(2) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d) Either party, without leave of the hearing officer, may depose witnesses, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories and request for admissions. The party receiving interrogatories or request for admissions shall respond within fifteen (15) days. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or such shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) [~~(d)~~] Noncompliance with the requirements of this subsection, including failure of the authority to timely appoint a hearing officer or respond to a request for inspection of records in a timely manner sufficient to permit the debtor or hearing officer to timely perform his obligations shall be sufficient grounds for entry of an appropriate order by the hearing officer, including, but not limited to, postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay.

(3) Order of proceeding. The hearing officer shall convene an in-person or telephonic hearing, identify the parties to the action and the persons participating, admit into evidence the notice described in Section 1(2) of this administrative regulation and the debtor's response described in subsection (2) of this section, solicit from the parties and dispose of any objections or motions, accept into evidence any documentary evidence not objected to, solicit opening statements, and proceed with the taking of proof. The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth. However, statutes or judicial rules otherwise pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section, and the hearing officer may receive any evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision. Copies of documents shall be admissible, and shall require only the minimal authentication necessary to establish a reasonable presumption of their genuineness and accuracy or may be admitted without objection. The hearing officer may exclude any evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious. At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

Section 4. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by [~~certified~~] mail[~~, return receipt requested~~]. A notice of the issuance of the order shall be provided to the debtor's by regular first class mail. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the debtor disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs[~~, including, but not limited to, the cost of conducting a hearing or review of written material requested by the borrower,~~] that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount

is withheld. The employer shall be liable to the authority for any lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) No withholding under this section shall be grounds for discharge from employment, refusal to employ or disciplinary action against any employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 5. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, said service may be made by any officer authorized under KRS 454.140 to serve process or by any person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or any other adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) In the case of an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if the person to whom the order is directed signs or refuses to sign a receipt or if his employee or agent with apparent authority signs or refuses to sign a receipt.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: May 27, 1994

FILED WITH LRC: June 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, July 21, 1994 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Friday, July 15, 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. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: Because this amendment deals with the hearing process (requests for hearings), only an estimate, based on previous experiences, can be given. Of the 2,930 accounts (student loans) that entered the garnishment process during the last two years, only 55 (less than 2%) debtors have requested a hearing. The majority of those cases were resolved, through repayment arrangements, before the hearing date.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be minimal savings to the public. When this administrative regulation was originally promulgated, the administrative regulation permitted, but did not require, expenses of hearings to be charged to the debtor as a collection cost. KHEAA was advised by the U.S. Department of Education subsequent to the last amendment of this administrative regulation that this cost may not be assessed to the debtor. The cost of the hearing (approximately $200 per case) has been absorbed by KHEAA since that directive from the U.S. Department of Education. This amendment reflects that change of practice.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: This amendment reflects a recent change in legislation authorizing hearing officers appointed by KHEAA to issue subpoenas for attendance of witnesses and production of documents. The amendment would also allow either party to serve on the opposing party requests for admissions and interrogatories. While it is anticipated that these procedures would be used only on rare occasions to clarify issues and expedite the hearing process, these changes provide the potential for additional paperwork requirements for both the agency and the public.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be minimal costs to the agency. When this administrative regulation was originally promulgated, the administrative regulation permitted, but did not require, expenses of hearings to be charged to the debtor as a collection cost. KHEAA was advised by the U.S. Department of Education subsequent to the last amendment of this administrative regulation that this cost may not be assessed to the debtor. The cost of the hearing (approximately $200 per case) has been absorbed by KHEAA since that directive from the U.S. Department of Education. This amendment reflects that change of practice. There will be some savings realized by the agency because the federal regulations do not require that notices be sent by certified mail. KHEAA, through this amendment, adopts the federal practice of sending notices by regular First Class mail. The savings to KHEAA would be approximately $2 per case (representing approximately $6,000 based on previous volume).

2. Continuing costs or savings: Same as (2)(a)(1) above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment reflects a recent change in legislation authorizing hearing officers appointed by KHEAA to issue subpoenas for attendance of witnesses and production of documents. The amendment would also allow either party to serve on the opposing party requests for admissions and interrogatories. While it is anticipated that these procedures would be used only on rare occasions to clarify issues and expedite the hearing process, these changes provide the potential for additional paperwork requirements for both the agency and the public.

(3) Assessment of anticipated effect on state and local revenues: The amendment will not have any significant impact of increasing or decreasing state or local revenue. The amendment is intended to simplify and clarify aspects of the notice and hearing procedures related to collection of defaulted student loans through the administrative garnishment process. Accordingly, any impact would be to expedite the collection of funds that must be returned to a federally restricted reserve fund.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of retaining the use of certified mail for notices was considered. While not prohibited by the amended administrative regulation, the use of certified mail is modified in the amendment for consistency with federal practice in this area.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments:

Tiering: Was tiering applied? No. This administrative regulation

prescribes uniform procedures for administration of the wage garnishment process under federal law. Accordingly, the notice provisions, hearing procedures and wage withholding requirements need to be uniformly applicable to all those effected. Disparate treatment of any person or entity affected by 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. Cite the federal statute or regulation constituting the federal mandate. Section 488A of the Higher Education Act of 1965 (20 USC §1095a) as added by §605 of PL 102-164 (Nov. 15, 1991) and 34 CFR §682.410(b)(10) (59 Federal Register 22488, April 29, 1994).

2. State in sufficient detail the state compliance standards: This administrative regulation provides for issuance of a notice by the agency, to a defaulting debtor, delineating the rights of the debtor (including the right to inspect records, make voluntary payments, or request a hearing to dispute the debt. The administrative regulation sets forth the time frame and procedure for conducting an evidentiary hearing, if one is requested. Finally, the administrative regulation prescribes the process for issuance of an administrative order for withholding of 10% of a debtor's disposable earnings.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute, 20 USC §1095a, requires a minimum of 30 days prior notice to a defaulting debtor, and requires the agency to afford the opportunity to inspect records, make voluntary payments, and request a hearing to dispute the debt. The federal statute provides that the agency shall conduct an administrative hearing in a manner prescribed by the agency, and precludes a full-time employee of the agency from conducting the evidentiary hearing. The federal statute limits the amount of wages that may be subjected to withholding under this process to 10% of the debtor's disposable earnings. The federal regulation, 34 CFR §682.410(b)(10) (59 Federal Register 22488, April 29, 1994), substantially reiterates the federal statute, and requires that the guarantee agency initiate a lawsuit against an employer that fails to honor the wage garnishment order.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. This administrative regulation does not impose stricter, additional or different requirements than the federal mandate.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

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

RELATES TO: KRS 164.740 to 164.785, 1994 Ky. Acts ch. 36

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4), 1994 Ky. Acts ch. 36 [~~1992 Acts ch. 462~~]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide student financial assistance to students for attendance at Kentucky postsecondary educational institutions. This administrative regulation sets forth definitions of terms common to multiple administrative regulations in this chapter. This amendment is necessary to reflect a change in the CAP Grant Program made by recent legislation [~~terminology from "congressional methodology" to "federal methodology"~~].

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

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

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

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

(4) "College access program" or "CAP" means the program of student financial assistance grants authorized under 1994 Ky. Acts ch. 36 [~~HB 468 (1992 RS), Part I, F. 43, p. 47~~] to assist financially needy part-time and full-time undergraduate students attending an educational institution.

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

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

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

(a) Offers an eligible program of study;

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

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

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

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

(a) A U.S. national;

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

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

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

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

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

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

(b) For purposes of the Kentucky Tuition Grant Program leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled; and

(c) For purposes of the CAP Grant Program, leads to a certificate, diploma, or degree in a field other than theology, divinity or religious education.

(10) The term "expected family contribution" means the amount

that a student and his family are expected to contribute toward the cost of the student's education determined by applying federal methodology set forth in Title IV, Part F of the federal act to the information that the student and his family provided on the application.

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

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

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

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

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

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

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

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

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

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

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

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

(19) "Resident of Kentucky" or "resident" means a person who is classified as an in-state student in accordance with criteria set forth in the "Residency Classification Policy" at 13 KAR 2:040.

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

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: May 27, 1994

FILED WITH LRC: June 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, July 21, 1994 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Friday, July 15, 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. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: An estimated 300-400 students enrolled in nondegree programs of study at one of 25 publicly supported vocational-technical schools will now receive CAP grants. Students enrolled at a number of private institutions that do not offer degree programs are now potentially eligible for CAP grants, except that the institutions have not sought voluntary participation in the program for the 1994-95 academic year. An estimated 500 students attending 11 proprietary schools that participate in the CAP Grant Program will now receive only the grant amount equivalent to the prevailing tuition rate at the publicly supported vocational-technical schools, rather than the community college tuition rate.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment provides new definitions. Until now, KTG and CAP grants were available only to programs leading to a degree. The amended definition of eligible program of study expands eligibility for CAP grants to include programs leading to a certificate, a diploma, or a degree in accordance with changes in legislation. There should be no costs or savings in so far as the entire amount of funds appropriated for CAP grants is disbursed to students as financial assistance. The amended definition, reflecting the new legislation,. merely makes more students eligible for the available funds.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The money available for CAP grants will not change. Potentially, the pool of students submitting applications will increase. If so, the number of students receiving CAP grants will also increase, with some grants awarded for lesser amounts, based upon the differential between the tuition rates at the publicly supported community colleges and the publicly supported vocational-technical schools.

(b) Reporting and paperwork requirements: In the 25 vocational-technical schools that are newly eligible for the CAP Grant Program, the financial aid officers must process rosters and disburse CAP grant funds to recipients in the same manner as all other participating institutions. However, there is no change in the paperwork or reporting requirements effected by this amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Any increased costs associated with the eligibility of more programs of study and additional educational institutions would be negligible.

1. First year: No costs or savings are anticipated.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: The money available for CAP grants will not change. Potentially, the pool of students submitting applications will increase. If so, the number of students receiving CAP grants will also increase, with some grants awarded for lesser amounts, based upon the differential between the tuition rates at the publicly supported community colleges and the publicly supported vocational-technical schools.

(b) Reporting and paperwork requirements: There are no new

reporting or paperwork requirements imposed upon the agency by this amendment.

(3) Assessment of anticipated effect on state and local revenues: The funds available for the CAP Grant Program will not change, and the grants are awarded to students, not institutions. Therefore, there is no effect on state or local revenue

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. This regulation is being amended to conform to 1994 Kentucky Acts Chapter 36.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. This amendment merely changes a definition for consistency with new legislation.The concept of tiering is not applicable to amendment of this regulation. Disparate treatment of any person or entity affected by 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.

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:034. CAP grant student eligibility.

RELATES TO: KRS 164.744(2), 164.753(4), 1994 Ky. Acts ch. 36

STATUTORY AUTHORITY: KRS 164.748(4)[, ~~1992 Acts ch. 462~~]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs of student financial assistance, including federal funds under the state student incentive grant program. 1994 Ky. Acts ch. 36 [~~House Bill 468~~] authorized and directed the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. That Act [~~budget bill~~] also authorized the authority to promulgate administrative regulations pertaining to administration of those grants, to use appropriated funds to match federal funds, and to conform those regulations to federal law for full participation in the state student incentive grant program. This administrative regulation establishes student eligibility requirements for the college access program. This amendment is necessary to reflect legislation. [~~This regulation substantially duplicates provisions of 11 KAR 11:010 adopted under authority of a prior biennial budget, and therefore contains a section repealing that prior regulation.~~]

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

(1) Be a resident of Kentucky;

(2) Be enrolled at an educational institution for at least six (6) [~~or more~~] semester hours or half-time as determined by the educational institution, whichever is greater, in an eligible program of study and not have previously earned a first baccalaureate or professional degree;

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

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

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

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

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

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

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

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: May 27, 1994

FILED WITH LRC: June 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, July 21, 1994 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Friday, July 15, 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. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: An estimated 300-400 students enrolled in nondegree programs of study at one of 25 publicly supported vocational-technical schools will now receive CAP Grants. Those institutions monitor attendance on a clock hour rather than a semester hour basis. Students enrolled at a number of private institutions that do not offer degree programs are likewise now potentially eligible for CAP Grants, except that the institutions have not sought voluntary participation in the program for the 1994-95 academic year.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings. The administrative regulation continues to require half-time enrollment as a condition of student eligibility. The amendment merely reflects that enrollment status may be measured in a manner other than semester hours.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None. See (1)(a)#1 above.

1. First year: See (1)(a)#1 above.

2. Continuing costs or savings: See (1)(a)#1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no additional reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues:

There is no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. Schools that do no offer degree programs typically monitor enrollment status in a manner other than use of semester hours. Since those programs of study are now eligible for the CAP Grant program under new legislation, the different method of monitoring enrollment status needs to be accommodated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: This amendment clarifies that in order to receive a CAP grant, a student must be enrolled for at least six semester hours, or half-time as determined by the educational institution.

Tiering: Was tiering applied? No. Tiering was not applied, because the regulation set uniform procedures. Disparate treatment of any person or entity affected by 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.

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation prescribes the form to be used by students to apply for and establish financial need for KHEAA grant programs. This amendment is necessary to reflect the application form for KHEAA grants for use in 1994-95 [~~1993-94~~].

Section 1. In order to receive KHEAA grants, the 1994-95 [~~1993-94~~] Free Application for Federal Student Aid (FAFSA), incorporated herein by reference, for the pertinent academic year, shall be completed and submitted in accordance with the instructions provided on the FAFSA. The application and instructions are available from the authority at its office at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. An applicant shall indicate the choice of an educational institution on the application to be considered for the KHEAA grant. The educational institution listed first shall be used in the determination of a KHEAA grant program award. An individual who completes and files a FAFSA shall not have applied for a KHEAA grant for an academic year in which he indicates on the application a choice of educational institutions, none of which participate in the KHEAA grant programs; or that he is not a United States citizen, eligible noncitizen, or resident of Kentucky; or that he is a graduate student or will obtain a first baccalaureate degree before July 1 of the academic year for which he is seeking student financial assistance.

Section 2. If the student provides written notification of change of first choice educational institution, on or before August 1 or December 1, prior to the commencement of the respective fall or spring semester for which a KHEAA grant is sought, grant program eligibility shall be redetermined and award determination shall be recomputed by the authority based upon the new choice of educational institution. If the student changes his or her choice of educational institution after those dates, any KHEAA grant award for the succeeding academic term shall be revoked, and grant program eligibility shall be recomputed and depend upon the availability of funds.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: May 27, 1994

FILED WITH LRC: June 15, 1994 at 11 a.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: 81 postsecondary educational institutions and an estimated 150,000 Federal Student Aid (FAFSA) filers will be affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings. The amendment merely incorporates the federal student financial assistance application form for the new academic year. The application and processing of that form is free to students.

2. Continuing costs or savings: See #1 above.

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

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None. See (1)(a)#1 above.

1. First year: None

2. Continuing costs or savings: N/A

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: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. The free federal application form provides the necessary data to award state grants and imposes no cost on the students.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(6) Any additional information or comments: This amendment is being amended to require that a 1994-95 Free Application for Federal Student Aid (FAFSA) be used to apply for a 1994-95 academic year Kentucky Higher Education Assistance Authority grant.

Tiering: Was tiering applied? No. Tiering was not applied, because the regulation merely prescribes a single application form that is free to all students. Disparate treatment of any person or entity affected by 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.

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

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

RELATES TO: KRS 164.744(2), 164.753(4)

STATUTORY AUTHORITY: KRS 164.748(4), 1994 Ky. Acts ch. 36 [HB 468 (1992 RS), Part I, F. 43, p. 47]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation prescribes the award determination procedures for the CAP grant program. This amendment is necessary to reflect changes made by 1994 Ky. Acts ch. 36 [change a reference from a minimum combined KHEAA grant award to a minimum CAP grant award].

Section 1. Each application shall be reviewed for determination that all eligibility requirements set forth in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be $1,500 or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (5) [(3)] of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment in an eligible program at a college on a full-time basis as determined by the educational institution shall be the prevailing full-time student tuition charge at publicly supported community colleges in Kentucky at that time.

(2) Except as provided in subsection (5) [(3)] of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment in an eligible program at a college on less than a full-time basis as determined by the educational institution shall be the prevailing tuition charge per semester credit hour at publicly supported community colleges in Kentucky (not in excess of the maximum specified in subsection (1) of this section).

(3) Except as provided in subsection (5) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment in an eligible program at a business school, school of nursing, or vocational school on a full-time basis as determined by the educational institution shall be the prevailing full-time student tuition charge at publicly operated vocational-technical institutions in Kentucky at that time.

(4) Except as provided in subsection (5) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment in an eligible program at a business school, school of nursing, or vocational school on less than a full-time basis, as determined by the educational institution, shall be the prevailing tuition charge applicable to the corresponding enrollment status of the applicant at a publicly operated vocational-technical institution in Kentucky (not in excess of the maximum specified in subsection (3) of this section).

(5) The maximum awards specified in subsections (1) and (2) of this section shall be adjusted by the authority as necessary to conform those maximums to the tuition rate generally charged for attendance at the Commonwealth's publicly supported community colleges, as determined by the Council on Higher Education. The maximum awards specified in subsections (3) and (4) of this section shall be adjusted by the authority as necessary to conform those maximums to the tuition rate generally charged for attendance at the Commonwealth's publicly operated vocational-technical institutions as determined by the Workforce Development Cabinet.

Section 3. Minimum CAP Grant. The minimum CAP grant awarded to an eligible full-time student in an eligible program at a college shall be the lesser of the prevailing full-time student tuition charge at publicly supported community colleges in Kentucky or the amount of eligibility the student has remaining within the aggregate KHEAA grant limit. The minimum Cap grant awarded to an eligible full-time student in an eligible program at a business school, school of nursing, or vocational school shall be the lesser of the prevailing full-time student tuition charge at publicly operated vocational-technical institutions in Kentucky or the amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

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

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

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

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

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

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: May 27, 1994

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hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: An estimated 300-400 students enrolled in nondegree programs of study at one of 25 publicly supported vocational-technical schools will now receive CAP Grants. Students enrolled at a number of private institutions that do not offer degree programs are now potentially eligible for CAP Grants, except that the institutions have not sought voluntary participation in the program for the 1994-95 academic year. An estimated 500 students attending 11 proprietary schools that participate in the CAP Grant program will now receive only the grant amount equivalent to the prevailing tuition rate at the publicly supported vocational-technical schools, rather than the community college tuition rate.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings. Until now, KTG and CAP Grants were available only to programs leading to a degree. Recent legislation expands eligibility for CAP Grants to include students enrolled at least half-time in two-year programs of study leading to a certificate, a diploma, or a degree. There should be no costs or savings in so far as the entire amount of funds appropriated for CAP Grants is disbursed to students as financial assistance. The amendment reflects the new legislation, and merely makes more students eligible for the available funds. However, students enrolled at participating business schools where students previously received grants in an amount tied to the tuition rate at publicly supported community colleges will now receive lower amounts tied to the tuition rate at publicly supported vocational-technical schools. This is the result of the new legislation, however, and not a separate policy determination reflected in this administrative regulation.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There is no cost or savings to the administrative body. See (1)(a)#1 above.

2. Continuing costs or savings: See (1)(a)#1 above.

3. Additional factors increasing or decreasing costs: See (1)(a)#1 above.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements imposed by this amendment.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: This amendment is necessary to ensure that grant recipients enrolled in a college receive an award equal to the community college tuition rate while those at business schools, schools of nursing, or vocational-technical schools receive an award equal to the tuition charges at publicly supported vocational-technical schools in accordance with recent legislation.

Tiering: Was tiering applied? No. Tiering was not applied, because the administrative regulation establishes uniform procedures. Disparate treatment of any person or entity affected by 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.

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:160. Disbursement procedures.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation sets forth the disbursement procedures for KHEAA grant programs. This amendment is necessary to change the method of disbursement at educational institutions that use the academic quarter system. [~~delete common definitions that are being placed in a separate regulation and to clarify certain institutional duties. The provisions of this regulation substantially duplicate 11 KAR 11:050. Therefore, an amendment of this regulation repeals 11 KAR 11:050.~~]

Section 1. Eligibility Verification. (1) The KHEAA grant program eligibility verification roster shall be forwarded to the KGPO at each educational institution prior to the beginning of each semester.

(2) The KGPO shall certify the eligibility of KHEAA grant recipients and return the roster to the authority according to instructions attached to the roster.

Section 2. Disbursement of Funds. (1) KHEAA grant funds shall be disbursed by the authority twice during an academic year to educational institutions for subsequent delivery to eligible students. The first disbursement of KHEAA grant funds by the authority to educational institutions shall be made in August for subsequent delivery by the institution to eligible students enrolled for a semester or quarters beginning not earlier than July 1 and not later than December 31. The second disbursement of KHEAA grant funds by the authority to educational institutions shall be made in January for subsequent delivery by the institution to eligible students enrolled for a semester or quarters beginning not earlier than January 1 and not later than June 30. [~~The authority shall transfer funds to the KGPO at the time the eligibility verification roster is transmitted.~~] Upon receipt of the properly certified eligibility verification roster, the authority shall transfer additional funds, if necessary, to the KGPO. The KGPO shall return to the authority, according to instructions attached to the roster, all funds advanced that remain undisbursed to eligible students.

(2) The instructions accompanying the eligibility verification roster shall specify:

(a) Conditions under which a KHEAA grant shall be disbursed to the benefit of the KHEAA grant recipient;

(b) Conditions under which KHEAA grant funds shall be returned to the authority; and

(c) The date by which the roster and any undisbursed funds shall be returned to the authority.

(3) An institution which has not returned an eligibility verification roster or completed it according to instructions shall not receive additional KHEAA grant funds until it has satisfied the requirements in subsection (2) of this section. Furthermore, the authority, in its sole

discretion, may withhold any services and funds from the educational institution from the due date until the roster and all funds advanced, that remain undisbursed to eligible students, are received by the authority.

Section 3. Alternative Disbursement. In lieu of the processes respecting the disbursement of KHEAA grant funds pursuant to Section 2 of this regulation, the authority, in its sole discretion, may enter agreements on such terms as the authority deems appropriate to provide alternative methods for economical and efficient disbursement of KHEAA grants.

Section 4. If the student submits to the authority a written request to receive the maximum KTG for which he is eligible during the fall semester and that request is received by the authority not later than August 1 preceding the fall academic term for which a KTG is awarded, the entire amount of the KTG, up to the amount of tuition and fees charged for the fall academic term, may be disbursed for that academic term. Otherwise, a KTG shall be disbursed in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term. A CAP grant shall always be disbursed in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term.

Section 5. [~~KHEAA grants shall be disbursed to eligible students enrolled at an educational institution using the quarter system so that the first disbursement shall be in the fall quarter beginning in August, September, or October, and the second disbursement shall be in the winter quarter beginning in January, February, or March. Enrollment during a spring quarter beginning in April or later shall not qualify a student for KHEAA grant assistance.~~

~~Section 6.~~] KHEAA grants shall be disbursed to eligible students enrolled at an educational institution that uses [~~using~~] a short winter term in combination with longer fall and winter terms so that the first disbursement shall be in the fall academic term and the second disbursement shall be in the spring academic term. Enrollment during the shorter winter academic term shall not qualify a student for KHEAA grant assistance.

Section 6. [~~7.~~] The educational institution shall be responsible for proper disbursement of KHEAA grants. The educational institution shall not make KHEAA grant funds available to the grant recipient nor apply such funds to the recipient's account prior to the date that the recipient has completed the registration requirements (except for the payment of tuition and fees) at the institution for each academic semester or quarter for which the KHEAA grant is awarded. The maximum CAP grant amount that can be disbursed in one (1) quarter to recipients attending business schools, schools of nursing, or vocational schools cannot exceed the tuition charges for one (1) quarter at publicly operated vocational-technical schools in the Commonwealth. The institution shall be liable for disbursement to the wrong individual or to an ineligible student, and shall make restitution to the authority of any amount improperly disbursed. Failure of the institution to make restitution when required shall, without precluding other remedies, be deemed cause for limitation, suspension or termination of the participation of the institution in accordance with 11 KAR 4:020.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: May 27, 1994

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REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: 81 postsecondary educational institutions and an estimated 21,150 CAP grant recipients and 8,200 KTG recipients will receive Kentucky Higher Education Assistance Authority grant funds totalling $27,000,000.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings. The timing and method of disbursement is not being changed. Disbursements continue to be made twice per year. However, grants were previously limited to students enrolled in degree programs. Schools offering degree programs typically use semesters. Under new legislation, grants are now available to students enrolled in nondegree programs at vocational schools. Such schools typically use year-round enrollment with academic quarters rather than semesters. Them amendment to this administrative regulation is intended to reflect how the current twice per year disbursement would coincide with the academic quarters used by those schools.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no direct or indirect costs or savings.

1. First year: See (1)(a)(1) above.

2. Continuing costs or savings: See (1)(a)(1) above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This amendment effects no change in state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: This amendment requires a grant recipient to have completed the registration requirements at the institution for each academic semester or quarter (except for the payment of tuition and fees) before his/her Kentucky Higher Education Assistance Authority grant can be disbursed or credited to his/her account.

Tiering: Was tiering applied? No. Tiering was not applied, because the regulation sets uniform procedures. Disparate treatment of any person or entity affected by 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.

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3), 1994 Ky. Acts ch. 163

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 1994 Ky. Acts ch. 163 [~~Acts 1992, c. 462, Part 1, F., 42., p. 1978~~]

NECESSITY AND FUNCTION: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) prescribes certain standards for scholarship programs. [~~House Bill 799 appropriated funds for a new program of teacher scholarships.~~] The General Assembly has expressed a desire, in 1994 Ky. Acts ch. 163 Section 1(6)(c) and in previous [a] budget memoranda [~~memorandum~~] prepared under KRS 48.300(2) to accompany previous biennial budgets [~~House Bill 799~~], that prior recipients of loans pursuant to KRS 156.611, 156.613, 164.768 and 164.770 should be eligible for benefits under this [~~new~~] program. This administrative regulation delineates eligibility criteria and repayment obligations related to scholarships provided under the [~~new~~] program [~~and establishes a capability for refinancing of prior loans~~]. This amendment is necessary to reflect changes in the program made by 1994 Ky. Acts ch. 163 [~~provide a method of selection of applicants within applicant groups in the event of insufficient funds~~].

Section 1. Definitions. As used in this administrative regulation, the terms listed below shall have the following meanings:

(1) The definition of "critical shortage area" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(a). [~~means an understaffing of teachers for particular subjects, grade levels, or geographic locations as determined by the authority from any sources considered reliable, including, but not limited to, consultation with local and state school officials.~~]

(2) The definition of "eligible program of study" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(b). [~~means an undergraduate or graduate program of study which is preparatory to initial teacher certification or recertification, and which does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.~~]

(3) "Minority" means American Indian, Alaskan native, African-American, Hispanic (including persons of Mexican, Puerto Rican, Cuban, and South or Central American descent), Pacific Islander, or other ethnic group underrepresented in a local school district. [~~"Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a public school or a private school certified pursuant to KRS 156.160(3), of the Commonwealth.~~]

(4) The definition of "participating institution" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(c). [~~"Semester" means a period of about eighteen (18) weeks, which usually makes up one half (1/2) of a school year or one half (1/2) of a participating institution's academic year.~~]

(5) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, and secondary instruction. [~~"Participating institution" means an institution of higher education located in Kentucky, which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program.~~]

(6) The definition of "qualified teaching service" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(d).

(7) The definition of "semester" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(e).

(8) "Teaching" means performing classroom instruction in a position for which teacher certification is a prerequisite to perform such instruction.

Section 2. Selection Process. [~~Eligibility.~~] (1) Ineligibility of any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 may be waived by the executive director of the authority. [~~The authority may, to the extent of appropriations and other funds available to it for this purpose, award teacher scholarships to persons enrolled or accepted for enrollment at participating institutions, who declare an intention to render qualified teaching service, and who are eligible under subsections (3) and (4) of this section.~~

~~(2) The authority shall, except for limitations imposed by subsection (5) of this section, cancel the repayment obligation of recipients of teacher scholarships who render qualified teaching service in accordance with Section 5 of this administrative regulation.~~

~~(3) Kentucky residents who are enrolled or accepted for enrollment in an eligible program of study on a full time basis at a participating institution and who agree to render qualified teaching service upon completion of the program of study shall be eligible, except for limitations imposed by subsection (5) of this section, to apply for teacher scholarships if they meet the following criteria:~~

~~(a) High school graduates with no college hours must rank academically in the top ten (10) percent of their high school graduating class or score at or above the 80th percentile on an instrument approved by the Council on Higher Education for admission to Kentucky's institutions of higher education.~~

~~(b) Certified teachers seeking recertification in order to teach in a critical shortage area must have a cumulative grade point average of at least the equivalent of 2.5 on a 4.0 scale on prior undergraduate studies or a 3.0 on a 4.0 scale on prior graduate studies. A certified teacher, who initially enrolls for recertification to teach in a designated critical shortage area, shall continue to benefit from that designation for so long as the teacher pursues that recertification, notwithstanding a change in the critical shortage area designation subsequent to the initial enrollment.~~

~~(c) Applicants with earned college hours must have attained at least the equivalent of a 2.5 grade point average on a 4.0 scale for all undergraduate work and a 3.0 on a 4.0 scale for all graduate work and must be currently enrolled or accepted for enrollment in a postsecondary institution.~~

~~(4) Persons enrolled full time at a participating institution in an eligible program of study who have previously received a teacher loan or a mathematics and science incentive loan, pursuant to KRS 156.611, 156.613, 164.768 or 164.770, or a teacher scholarship pursuant to this section, not in excess of the aggregate limit prescribed by Section 3 of this administrative regulation, shall be eligible, except for limitations imposed by subsection (5) of this section, to apply for additional teacher scholarships if they:~~

~~(a) Have maintained continuous full time enrollment, exclusive of periods of approved deferment, in an eligible program of study;~~

~~(b) Have made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution; and~~

~~(c) Have attained a cumulative grade point average of at least the equivalent of 2.5 on a 4.0 scale on all prior undergraduate studies and at least 3.0 on a 4.0 scale on all prior graduate studies.~~

~~(5) No teacher scholarship shall be awarded nor promissory note cancellation granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until such financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the executive director of the authority at the recommendation of a designated staff review committee, for cause.~~]

(2) [~~(6) Selection process.~~] Applicants shall be considered and teacher scholarships shall be awarded to recipients who agree to render qualified teaching service in the following descending order until funds are depleted:

(a) Qualified renewal applicants who have made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

[~~pursuant to subsection (4) of this section.~~] If funds are insufficient to award full scholarships to all renewal applicants each scholarship shall be reduced by a percent necessary to prevent overexpenditure of funds;

(b) Certified teachers seeking recertification in a critical shortage area, ranked in descending order by cumulative postsecondary grade point average;

(c) Initial applicants (including currently enrolled postsecondary students and high school seniors [~~who have been admitted to a teacher education program, ranked in descending order by cumulative postsecondary grade point average as of the application date;~~

~~(d) Currently enrolled postsecondary students who have not yet been admitted to a teacher education program, ranked in descending order by cumulative postsecondary grade point average as of the application date; and~~

~~(e) High school seniors~~] ranked by weighted selection scores that include rank in high school class (thirty (30) percent), high school grade point average (forty (40) percent), and American College Test (ACT) Composite Standard Score (thirty (30) percent).

(3) Following the selection pursuant to subsection (2)(a) of this section, awards shall be made, pursuant to subsection (2)(b) and (c) of this section, to minority applicants, identified based upon information provided by the applicant on the application, in at least the same ratio to all awards made pursuant to subsection (2)(b) and (c) of this section as the ratio of initial applications by minority applicants bears to all initial applications.

Section 3. Award Maximums. The maximum teacher scholarship award shall be $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session). [~~Awards shall not exceed the student's total cost of attendance less other aid received as determined by the participating institution. The aggregate maximum of teacher scholarship awards shall not exceed $20,000 per individual.~~]

Section 4. Disbursements. Disbursement of teacher scholarships shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

Section 5. Cancellation. (1) If [~~Recipients shall render one (1) semester of qualified teaching service as repayment for each semester or summer term of scholarship received, except that recipients who teach in a critical shortage area shall render one (1) semester of qualified teaching service as repayment for two (2) semesters or summer terms of scholarships received. Once an area is designated as a critical shortage area,~~] a recipient [~~who~~] renders [~~uninterrupted~~] qualified teaching service in a [~~that~~] designated critical shortage area, then, as long as the recipient continues to render qualified teaching service in that area, the recipient shall continue to benefit from the designation, notwithstanding a subsequent change in the critical shortage area designation. A recipient of a teacher scholarship pursuant to Section 2(2)(b) of this administrative regulation, who obtained recertification to teach in an area designated as a critical shortage area at the time of the teacher scholarship award to that recipient, shall receive cancellation of the repayment obligation only if the recipient renders qualified teaching service in that designated area or in another area designated as a critical shortage area at the time the qualified teaching service is rendered.

(2) [~~Recipients who have outstanding mathematics and science incentive loans or teacher loans pursuant to KRS 156.611, 156.613, 164.768 or 164.770 may execute a new promissory note under the terms of this program in full satisfaction of the outstanding balance of prior promissory notes. The new promissory notes shall be cancelled in accordance with subsection (1) of this section.~~

~~(3)~~] In the event that a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, such teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(3) [~~(4)~~] Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) If a recipient ceases to be enrolled on a full-time basis in an eligible program of study at a participating institution prior to completion of the program of study or otherwise fails to attain certification after completion of the eligible program of study, he shall immediately become liable to the authority to pay the sum of all teacher scholarships received and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(2) Recipients failing to render qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all outstanding teacher scholarships and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(3) [~~Persons liable for repayment of teacher scholarships under this section shall be liable for interest accruing on each promissory note from the respective dates on which the teacher scholarships were disbursed.~~

~~(4)~~] The interest rate applicable to repayment of a teacher scholarship under this section shall be twelve (12) percent per annum[~~, except that promissory notes shall provide that if a judgment is rendered to recover payment, the judgment shall bear interest at a rate five (5) percent greater than the rate actually charged on the promissory note~~].

Section 7. Notifications. Recipients shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of students receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of funds hereunder. Such records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. A participating institution shall refund to the authority, within forty (40) days of a recipient's last date of attendance, any amount attributable to this program which is determined to be due under the institution's published refund policy.

Section 11. Information Dissemination and Recruitment. The

authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. Participating institutions shall provide assurances that program information will be disseminated to students enrolled at their institutions. Participating institutions shall actively recruit students from minority population groups for participation in this program.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: May 27, 1994

FILED WITH LRC: June 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, July 21, 1994 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Friday, July 15, 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. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: 43 public and private colleges participate in this program. An estimated 275 initial Teacher Scholarship recipients will be awarded funds totalling an estimated $1,164,000.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings. The amendments to this administrative regulation reflect enactment of recent legislation that codifies this program. Previously, the program (and consequently this administrative regulation) was authorized by language contained in the biennial budget. The legislation does not alter the manner in which the teacher scholarships are awarded, repaid or cancelled, except that under the legislation, minority applicants are to receive awards in proportion to the number of minority applicants. All funds appropriated for this program are awarded as scholarships.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements imposed by this amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The amendments to this administrative regulation do not result in additional cost or savings to the administrative body.

1. First year: See (1)(a)#1 above.

2. Continuing costs or savings: See (1)(a)#1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements imposed by this amendment.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: This regulation is necessary to conform to 1994 Kentucky Acts Chapter 163. This statute not only broadened the eligibility criteria but also requires that after awarding renewals, the number of awards to minority applicants shall equal or exceed the proportion of eligible, minority applicants to the total number of eligible applicants.

Tiering: Was tiering applied? No. Tiering was not applied, because the administrative regulation sets uniform procedures. Disparate treatment of any person or entity affected by 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.

DEPARTMENT OF THE TREASURY
(Proposed Amendment)

20 KAR 1:010. Access to public records of State Treasury.

RELATES TO: KRS 61.870 to 61.884

STATUTORY AUTHORITY: KRS 61.876

NECESSITY AND FUNCTION: KRS 61.876 requires that each public agency shall adopt rules and administrative regulations to provide full access to public records, to protect public records from damage and disorganization, to prevent excess disruption of its essential functions, to provide assistance and information upon request and to ensure efficient and timely action in response to application for inspection of public records. This administrative regulation proposes to fulfill this statutory requirement.

Section 1. The principal office location for the State Treasury is the first floor of the Capitol Annex, Frankfort, Kentucky 40601. Regular office hours are 8 a.m. to 4:30 p.m., Monday through Friday, prevailing time in Frankfort, Kentucky.

Section 2. The title of the official custodian of the records of the State Treasury is the State Treasurer of the Commonwealth of Kentucky, whose address is Capitol Annex, Frankfort, Kentucky 40601.

Section 3. Fees to be charged for copies of public records shall be ten (10) cents for each photocopy.

Section 4. The procedure to be followed in requesting inspection of public records shall be as follows:

(1) Requests for inspection of public records shall be made directly to the State Treasurer or to the designee; [~~chief assistant to the State Treasurer. The name of the chief assistant shall be posted with these regulations in the Office of the State Treasury;~~]

(2) Requests to inspect public records shall [~~may~~] be made [~~orally or~~] in writing, describing in reasonably sufficient detail the records to be inspected. Inspection may be denied if the request is unreasonably burdensome or vague. Social Security, bank account, credit card, insurance policy, bond and stock certificate numbers shall not be available for inspection; [~~Every reasonable attempt shall be made by the State Treasury to respond to oral requests; however, oral requests which are found to be vague, long or complex shall be required to be submitted in writing in letter form;~~]

(3) Records shall be inspected and copied in the presence of a member of the State Treasury to protect the records from damage or disorganization, to lessen disruption of office procedure, to provide timely assistance and information upon request to the person

requesting inspection, and to provide full access to public records;

(4) Suitable facilities shall be made available for inspection of public records.

~~[Section 5. These records which are available for inspection and these records which are unavailable for inspection are defined in KRS 61.870 to 61.884. A copy of this Act shall be displayed with this regulation in the State Treasury.]~~

Section 5. ~~[6.]~~ A copy of KRS 61.870 to 61.884 and this administrative regulation shall be displayed in the main reception room of the State Treasury on the first floor of the Capitol Annex.

FRANCES JONES MILLS, Treasurer

APPROVED BY AGENCY: May 24, 1994

FILED WITH LRC: May 31, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 21, 1994, at 10 a.m., in Room 125, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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. 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: Frank Leidermann, State Treasury, 183 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-4722.

REGULATORY IMPACT ANALYSIS

Contact Person: Frank Leidermann

(1) Type and number of entities affected: Treasury Department.

(a) Direct and indirect costs or savings to those affected:

1. First year: No impact.

2. Continuing costs or savings: No impact.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No impact.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Clarify Treasury Department's position on open records law.

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

1. First year: No impact.

2. Continuing costs or savings: No impact.

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: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

TIERING: Is tiering applied? Doesn't apply because it applies equally to every person.

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:365. Appeal and hearing procedures.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings.

Section 1. General Provisions. (1)(a) Appeals shall be filed with the Personnel Board through the office of the executive director.

(b) Appeals, motions, exceptions, responses, witness lists, or other documents may be filed by a party with the board by means of facsimile transmission. An attempt shall be made by the party to transmit such documents to all parties in like manner.

(c) To be timely filed, a document transmitted by facsimile must be received by the board within the statutory or regulatory times specified for filing and must be received by the board no later than midnight on the last day for filing.

(d) The original of all facsimile transmissions shall be received by the Personnel Board no later than three (3) business days after transmission or the document transmitted may be voided.

(e) Failure of the board's facsimile equipment to receive a document shall be at the risk of the sender, in which case receipt of the original by the board shall prevail.

(f) Nothing in this section shall be construed to permit the use of state time, equipment, materials, or personnel by state employees in pursuing an appeal.

(2)(a) All appeals shall be heard in Frankfort, Kentucky.

(b) An appeal shall be filed on "Kentucky Personnel Board Appeal Form".

(3) If the appeal form indicates that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders regarding the appeal shall be transmitted to that attorney and all filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(4) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to each appeal. If more than one (1) hearing officer is assigned, one (1) shall be designated as chief. If the appeal is to be heard by the full board, the chairman shall serve as the chief hearing officer.

Section 2. Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause. The request shall be in writing, shall state the reason for the request and include proposed dates for rescheduling. The request shall be filed with the board, through the office of the executive director, and mailed to all parties at least ten (10) days prior to the scheduled hearing.

(2) Any party objecting to a requested continuance may file a written objection stating the reason. Any objection shall be filed with the board, through the office of the executive director, within five (5) days prior to the scheduled hearing. Copies shall be mailed to all parties.

(3) A continuance may be granted in extraordinary circumstances by the hearing officer.

(4) A request for a continuance based on a bona fide personal emergency shall be granted only upon appropriate justification and may be granted without strict compliance with the requirements of this section.

(5) All requests for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the executive director

shall execute and transmit to all parties an interim order either granting or denying the continuance. If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 3. Prehearing Procedures. (1) All motions, requests or filings shall be in writing, filed with the board through the office of the executive director, and served on all other parties.

(2) Any interim order by the hearing officer shall be executed and transmitted by the executive director to all parties. Interim orders are not reviewable by the board except on final review, unless otherwise provided in the interim order.

(3) If an appealing employee retains counsel subsequent to filing his appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(4) An appealing employee shall notify all parties and the board in writing of any change of address.

(5) A list of witnesses who may be called to testify shall be filed by each party at least five (5) days prior to the scheduled hearing. Failure of either party to file a witness list within the prescribed time shall restrict that party to rebuttal.

(6) Kentucky Personnel Board subpoena forms shall be available in the office of the executive director and shall be issued by the executive director. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(7) Depositions may be taken only in extraordinary circumstances and upon authorization by the hearing officer. A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing. Any objections shall be filed prior to the scheduled hearing.

(8) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of any party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter on appeal.

(9)(a) The hearing officer may schedule a prehearing conference to define the issues, determine which facts, if any, can be stipulated, rule on pending motions or requests, and address any other matter which will facilitate the hearing.

(b) At the prehearing conference, the hearing officer shall not rule on a motion to dismiss for lack of jurisdiction.

(10) Any agreed settlements shall be submitted in writing for the full board's review and final action.

(11) The executive director, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:

(a) Procedural questions.

(b) Scheduling of hearings.

Section 4. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal. The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing. He shall require an orderly and proper decorum at the hearing, and shall be authorized to require compliance with his rulings.

(2) Failure of any party to appear at the hearing may result in an adverse ruling against that party.

(3) The rules of civil procedure do not apply.

(4) The hearing officer shall direct one of the parties to present its case first, examine witnesses and submit documentation, subject to cross examination. The opposing party shall then present its case, examine witnesses and submit documentation, subject to cross examination.

(5) All parties shall provide three (3) copies of any exhibit which is to be introduced as evidence. Copies shall be prepared prior to the hearing.

(6) The proceedings and evidence presented shall be recorded by a court reporter.

Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record.

(2) At the direction of the hearing officer, the recommended order shall be entered and transmitted by the executive director to all parties.

(3) Any party may submit written exceptions to the findings of fact and recommendations. Exceptions shall be filed with the board through the office of the executive director within ten (10) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(4) Any party may submit a written response to exceptions filed with the board. The response shall be filed with the board through the office of the executive director within twenty (20) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(5) In appeals where the recommended order entered by the hearing officer proposes immediate reinstatement, the appointing authority objecting to such a recommendation shall file a written request that reinstatement be stayed until appeals are exhausted. Such objection and request shall completely state the grounds relied upon by the appointing authority and be filed with the board and served upon the appellant or his counsel within fifteen (15) days of date the recommended order is entered.

Section 6. Board Review and Action. Following consideration by the full board, a final order shall be entered disposing of the appeal. The order shall be prepared, executed and entered at the direction of the board by the secretary to the board. Copies of the order shall be transmitted to all parties by the executive director.

Section 7. Incorporation by Reference. (1) "Kentucky Personnel Board Appeal Form (3-25-91)", and "Kentucky Personnel Board Subpoena Form (2-90)" are incorporated by reference.

(2) These forms may be inspected, copied or obtained at the Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

TERRI KING SCHOBORG, Chairperson

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: May 19, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 26, 1994, at 9 a.m., at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 21, 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: Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, (502) 564-7830.

REGULATORY IMPACT ANALYSIS

Contact Person: R. Hanson Williams

(1) Type and number of entities affected: All state agencies with classified employees.

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

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: Minimal

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. This regulation must apply to all classified employees and all state agencies with classified employees. Further tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(Proposed Amendment)

201 KAR 17:010. Application for licensure.

RELATES TO: KRS 334A.030, 334A.130

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY AND FUNCTION: This regulation is necessary to clarify the procedure for submitting an application for licensure.

Section 1. Application for Speech-Language Pathologist, Speech-Language Pathology Assistant, and Audiologist License. (1) No person shall practice or represent himself as a speech-language pathologist, speech-language pathology assistant, or audiologist in this state unless he is licensed in accordance with the provisions of KRS Chapter 334A, and the provisions of the regulations adopted thereunder.

(2) An application for license to practice as a speech-language pathologist, speech-language pathology assistant, or audiologist [~~pathology or audiology~~] shall be made to the Kentucky Board of Speech-Language Pathology and Audiology [~~upon forms provided by the board upon request and shall contain such information as the board may reasonably require~~].

(3) Each application for license shall be accompanied by the application fee which is nonrefundable.

(4) The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary.

(5) All applications shall be signed by the applicant [~~and notarized~~].

(6) [~~All applications shall include a recent photograph of the applicant.~~

~~(7)~~] If the board so directs, an applicant shall personally appear before the board or a member thereof for a personal interview, concerning his application.

JOAN DANCE, Board Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 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 July 20, 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 applying for licensure as a speech-language pathology assistant.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no additional costs other than the application fee and the examination fee.

2. Continuing costs or savings: There are renewal fees.

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 an application with the board.

(2) Effects on the promulgating administrative body: This regulation establishes the application process for persons to be licensed as speech-language pathology assistants.

(a) Direct and indirect costs or savings:

1 . First year: Application and examination costs will be recovered through fees.

2. Continuing costs or savings: Renewal costs will be recovered through fees.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: An application must be filed with the board.

(3) Assessment of anticipated effect on state and local revenues: Negligible

(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 Speech-Language Pathology and Audiology
(Proposed Amendment)

201 KAR 17:030. License fees.

RELATES TO: KRS 334A.160, 334A.170
STATUTORY AUTHORITY: KRS 334A.080
NECESSITY AND FUNCTION: This regulation is necessitated by KRS 334A.160 and sets forth in detail all fees charged by the board.

Section 1. Fee Schedule. The following fees shall be paid in connection with speech-language pathologist and audiologist applications, examinations, renewals, and penalties.

(1) Application fee for a speech-language pathologist license, $25.

(2) Application for an audiologist license, $25.

(3) Combined application fee for a speech-language pathologist and audiologist license, $25.

(4) Application fee for a speech-language pathology assistant license [~~Examination fee for a speech-language pathologist license~~], $25.

(5) [~~Examination fee for an audiologist license, $25.~~

~~(6) Examination fee for a speech-language pathologist and audiologist license, $50.~~

~~(7)~~] Initial speech-language pathologist license fee, $50.

(6) [~~(8)~~] Initial audiologist license fee, $50.

(7) [~~(9)~~] Combined speech-language pathologist and audiologist license fee, $100.

(8) Initial speech-language pathology assistant license fee, $25.

(9) [~~(10)~~] Renewal fee for speech-language pathologist license, $25.

(10) [~~(11)~~] Renewal fee for audiologist license, $25.

(11) [~~(12)~~] Combined renewal fee for speech-language pathologist and audiologist license, $50.

(12) Renewal fee for speech-language pathology assistant, $10.

(13) Renewal fee for grace period extending from January 31 to March 2:

(a) For speech-language pathologist license, $30.

(b) For audiologist license, $30.

(c) Combined fee for speech-language pathologist and audiologist license, $60.

(d) For speech-language pathology assistant, $15.

(14) Delinquency renewal after March 2 shall be:

(a) For speech-language pathologist license, $35.

(b) For audiologist license, $35.

(c) Combined fee for speech pathologist and audiologist license, $70.

(d) For speech-language pathology assistant, $20.

(15) Application fee for interim licensure for a speech-language pathologist, $25.

(16) Application fee for interim licensure for an audiologist, $25.

(17) Combined fee for speech-language pathologist and audiologist interim licensure, $50.

(18) Application fee for interim licensure for a speech-language pathology assistant, $25.

(19) There shall be no renewal fee for interim licensure, and the application fee of twenty-five (25) dollars for full licensure shall be waived for persons who have been duly licensed as interim licensees.

Section 2. No person shall practice as a speech-language pathologist, speech-language pathology assistant, or audiologist [~~pathology or audiology~~] in this state unless such license has been renewed as provided by law and upon payment of the prescribed fee. All licenses not renewed by March 2 following the date of issuance shall be deemed expired and no person shall engage in such practice.

Section 3. (1) Where an application is filed during the period of December 17 to January 30 and a license issued pursuant thereto, the board waives the renewal of such license for the ensuing licensing year.

(a) The inactive license fee for a speech-language pathologist for a licensing year shall be, $5.

(b) The inactive license fee for an audiologist for a licensing year shall be, $5.

(c) The inactive license fee for a speech-language pathologist and audiologist for a licensing year shall be, $10.

(2) The holder of an inactive license shall not actively engage in the practice of speech-language pathology or audiology. Reactivation of an inactive license to practice speech-language pathology or audiology may be obtained by:

(a) Filing the proper application with the board for reactivation; and

(b) Payment of the current renewal fee; and

(c) Compliance with the continuing education requirements found in 201 KAR 17:091, Section 2.

(3) Application for an inactive license shall be made to the board prior to March 2 and be accompanied by the prescribed fee of five (5) dollars or ten (10) dollars for such licensing year.

Section 4. A person who fails to renew his license within the five (5) years after its expiration may not renew it, and it may not be restored, reissued or reinstated thereafter, but such persons may apply for and obtain a new license if he meets the requirements of KRS Chapter 334A and the regulations adopted thereunder including successful passage of an examination.

JOAN DANCE, Board Chairman
APPROVED BY AGENCY: June 10, 1994
FILED WITH LRC: June 15, 1994 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 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 July 20, 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 applying for or holding licensure as a speech-language pathology assistant.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no additional costs other than the application fee and the examination fee.

2. Continuing costs or savings: There are renewal fees.

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 an application with the board and to file for renewal after licensure.

(2) Effects on the promulgating administrative body: This regulation establishes the fees for persons to be licensed as speech-language pathology assistants.

(a) Direct and indirect costs or savings:

1 . First year: Application and examination costs will be recovered through fees.

2. Continuing costs or savings: Renewal costs will be recovered through fees.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: An application must be filed with the board.

(3) Assessment of anticipated effect on state and local revenues: Negligible

(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 Physical Therapy
(Proposed Amendment)

201 KAR 22:031. Therapist's licensing procedure.

RELATES TO: KRS 327.050, 327.060, 327.080

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to define clearly the procedure for issuing licenses. This administrative regulation standardizes the administrative procedures involved in granting a physical therapy license through the various means of qualifying.

Section 1. Any candidate for licensure by examination shall first satisfy all application requirements, including payment of application and examination [~~applicable~~] fees established in 201 KAR 22:135. The initial examination [~~application~~] fee covers the first scheduled examination. The cost of the examination to the board plus an administrative fee of twenty-five (25) dollars [~~forty-seven (47) dollars and fifty (50) cents~~] shall be paid by the applicant for reexamination or for an examination which was obtained by the board upon application by a candidate but was not completed by the candidate. Upon approval as a candidate by the board, the candidate for licensure by examination shall be notified of the date, place and time of the examination to be held at the time and location set by the board.

(1) The board shall administer the National Physical Therapy Examination (NPTE) to those candidates permitted to sit for the examination. Other examinations as determined by the board may be administered in lieu of, or in addition to the NPTE.

(2) An examination candidate may make a written request to the board to be granted a one (1) time exemption from taking their scheduled examination due to an undue hardship. If the request is granted, the candidate may continue to practice until the next regularly scheduled examination.

Section 2. The examination filing deadline shall be eight (8) weeks prior to [~~If an applicant becomes a candidate for licensure by examination before forty-five (45) days preceding the date that~~] the next examination. If by that time the [~~is to be held and~~] credentials of the applicant are in order, application and examination fees submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary permit shall be issued to be in force until the results of that examination are received by the candidate, or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first.

Section 3. (1) A temporary permit requires that the physical therapist applicant shall work only under the supervision of a physical therapist licensed and practicing in Kentucky.

(2) Supervision requires the responsible therapist to be available and accessible by telecommunications at all times during the working hours of the person with a temporary permit.

(3) The supervising therapist shall be responsible for the direction of the actions of the person supervised when services are performed by the person with a temporary permit including cosigning all evaluations and physical therapy recordings within fourteen (14) days.

(4) The date of the record review shall be noted.

(5) The board may issue a temporary permit only to:

(a) [~~(1)~~] Graduates who have applied for licensure by examination, have met all requirements and are sitting for the next examination or who have taken that examination and have not yet been notified of the results.

(b) [~~(2)~~] Foreign-trained physical therapist applicants who have met all requirements for licensure application provided for in KRS 327.060(2), except that the applicant has not yet taken the NPTE or has not yet begun or completed one (1) year of board approved, supervised employment as a physical therapist.

(c) [~~(3)~~] Graduates who have been accepted as a candidate for licensure by examination in another state and who have met all requirements for Kentucky application but who have not yet taken or been notified of the results of that examination.

(6) The board may require any applicant for a temporary permit to submit, or cause to be submitted, a NPTE test verification history service report with the board before the applicant is eligible to receive a temporary permit.

Section 4. The following candidates are not eligible to practice as a physical therapist in any manner in Kentucky until they have successfully completed the board approved examination in this or another state:

(1) A person who has failed the NPTE in this or another state or country.

(2) A person who had qualified as an examination candidate but who did not sit for or complete the scheduled examination; and

(3) An endorsement candidate whose NPTE scores do not meet Kentucky's requirements.

Section 5. Candidates examined by boards of other states and territories shall have registered with the Interstate Reporting Service of the Professional Examination Service to have their examination results submitted to the board.

Section 6. The candidate for licensure by endorsement shall submit the regular license application form and pay the application fee established in 201 KAR 22:135. The Kentucky State Board of Physical Therapy shall endorse a candidate who has taken the NPTE prepared before July 7, 1989 or beginning in 1993 by the Professional Examination Service, or between November 1989 and December 1992 by Assessment Systems, Incorporated, whose score meets the board's requirements and whose physical therapy license has never been revoked or suspended, and is currently not on probation or under disciplinary review in another state. To be considered for licensure, a person examined prior to July 1, 1993 shall have achieved a score on the NPTE at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); and thereafter, the criterion referenced passing point recommended by the Federation of

State Boards of Physical Therapy set equal to a scaled score of 600. Other examinations as determined by the board may be administered in lieu of, or in addition to the NPTE.

Section 7. The candidate for licensure through reinstatement may receive renewal of his license without further examination upon requesting reinstatement, furnishing all information required of a license renewal applicant in 201 KAR 22:040, payment of the reinstatement fee established in 201 KAR 22:135. Therapists who have not been licensed for three (3) years shall, in addition, be required to show evidence of professional competency, and provide verification that any license to practice in another state has not been disciplined or is not under current disciplinary review. Reinstatement of the candidate will be at the board's discretion after evaluation of said evidence.

Section 8. A license, which shall be in effect until March 31st of the next uneven numbered year shall be issued by the board when it receives notice from the Professional Examination Service that the candidate by examination has received a passing grade which shall be set based on the criterion referenced passing point set equal to a scaled score of 600, and when candidates by endorsement and foreign trained candidates have met all requirements.

Section 9. The executive secretary of the board may function administratively to review, process and interpret all applications received by the board and correspond with the applicants accordingly.

TOM A. PENNINGTON, Chairman

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: June 10, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1994 at 10 a.m. at the Board Office, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, (502) 595-4687.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Brinly

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: See analysis accompanying proposed amendments to 201 KAR 22:135, Fees. This regulation does not address costs, only procedures.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Cost of examination to the agency will be paid by applicants.

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:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed administrative regulation if in conflict:

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

(6) Any additional information or comments: These proposed amendments are made pursuant to 1994 changes in KRS 327.050 which separated the examination fee from licensure application fee. The examination filing deadline was changed from 45 days, to 8 weeks before the examination to permit the examination company to have braille exam prepared, if necessary. The board may also require a candidate to have information furnished on previous examinations taken elsewhere if necessary.

TIERING: Is tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:106. Assistant's certification procedure.

RELATES TO: KRS 327.040

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: Because certification may be achieved in several ways, this administrative regulation defines the types of candidates, and procedure for making application to the State Board of Physical Therapy as a candidate for certification as a physical therapist's assistant.

Section 1. The fee for application for certification and the [~~by~~] examination fee are [~~is~~] established in 201 KAR 22:135. Upon approval as a candidate by the board, the candidate for certification by examination shall be notified of the date, place and time of the examination to be held at the time and location set by the board. The board shall administer the National Physical Therapy Examination (NPTE). Other examinations as determined by the board may be administered in lieu of, or in addition to, the NPTE to those qualified candidates permitted to sit for the examination.

Section 2. The examination filing deadline shall be eight (8) weeks prior to [~~If an applicant becomes a candidate for certification by examination before forty-five (45) days preceding the date that~~] the next examination. If by that time the [~~is to be held and~~] credentials of the applicant are in order, application and examination [~~correct~~] fees submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary permit shall be issued to be in force until the results of that examination are received, processed, and the candidate has been notified of the results, or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first.

(1) A temporary permit requires that the physical therapist's assistant candidate work only with on-site supervision of a physical therapist licensed in Kentucky who shall cosign and date all of the physical therapist's assistant's physical therapy patient records within seven (7) days of the recording.

(2) The board may issue a temporary permit to:

(a) [~~(1)~~] Graduates who have applied for certification by examination, have met all requirements and are sitting for the next examination or who have taken that examination and have not yet been notified of the results.

(b) [~~(2)~~] Graduates who have been accepted as a candidate for certification by NPTE in another state and who have met all requirements for Kentucky application, and are sitting for the next examination, or who have taken the examination but have not yet been notified of the results.

(3) The board may require any applicant for a temporary permit to submit, or cause to be submitted, a NPTE test verification history service report with the board before the applicant is eligible to receive a temporary permit.

Section 3. (1) The following candidates are not eligible to practice as a physical therapist's assistant in any manner in Kentucky until they have successfully completed the board approved examination in this or another state:

(a) A person who has failed the NPTE in this or another state or country.

(b) A person who had qualified as an examination candidate but who failed to take or complete the scheduled examination; and

(c) An endorsement candidate whose NPTE results do not meet Kentucky's requirements.

(2) An examination candidate may make a written request to the board to be granted one (1) time exemption from taking the scheduled examination without loss of practice privileges. The board shall consider requests which document undue hardship.

(3) To be examined, or reexamined in Kentucky, any candidate listed above must have applied for certification by examination and have met all application requirements, including payment of the applicable examination and application fees. The original examination [~~application~~] fee covers the first scheduled examination. The cost of the examination to the board plus an administrative fee of twenty-five (25) dollars [~~forty-seven (47) dollars and fifty (50) cents~~] shall be paid by the applicant for reexamination or for an examination not completed.

Section 4. Candidates examined by boards of other states or territories shall have registered with the Interstate Reporting Service of the Professional Examination Service to have their examination results submitted to the board.

Section 5. The candidate for certification by endorsement shall submit the regular application form. The Kentucky State Board of Physical Therapy shall endorse a candidate who [~~has paid an application fee proper for the period within the biennial licensure term in which he is applying,~~] has taken the NPTE prepared before July 7, 1989 and beginning in 1993 by the Professional Examination Service (PES) or between November 1989 and December 1992 by Assessment Systems, Incorporated (ASI), has achieved an examination score which meets the Kentucky board's requirements, and has never had a physical therapist's assistant certificate revoked or suspended or whose certificate is currently not on probation or under disciplinary review in another state. A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993 shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); and thereafter, the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600. The application fee, which shall be submitted to the executive secretary of the board is established in 201 KAR 22:135. Other examinations as determined by the board can be administered in lieu of, or in addition to, the NPTE.

Section 6. The candidate for reinstatement may have his certificate reinstated without further examination upon payment of the reinstatement fee established in 201 KAR 22:135, and furnishing all information required of a certification renewal applicant in 201 KAR 22:110 to the executive secretary of the board. Assistants applying for reinstatement who have not been certified for three (3) or more years and who have not been lawfully employed as an assistant in another state shall, in addition, be required to work with on-site supervision for a maximum period of time of up to six (6) months, and after an evaluation of the period of supervision, the board may require the applicant to be reexamined. An assistant who has been licensed and working in another state shall be required to provide verification that his license to practice in that state has not been disciplined or is not under current disciplinary review. Reinstatement of the candidate shall be at the board's discretion after evaluation of all evidence.

Section 7. Physical therapist candidates who fail to pass the physical therapists' licensure examination may become special candidates for physical therapist's assistant certification by applying for certification by examination and successful completion of that examination.

Section 8. Certification, which shall be in effect until March 31 of the next uneven numbered year shall be issued by the board when candidates for certification by endorsement and reinstatement have met all requirements and the board has received notice from the Professional Examination Service that the candidate by examination has received a passing grade of at least the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600.

TOM A. PENNINGTON, Chairman

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: June 10, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1994 at 10 a.m. at the Board Office, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, (502) 595-4687.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Brinly

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: See analysis accompanying proposed amendments to 201 KAR 22:135, Fees. This regulation does not address costs, only procedures.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Cost of examination to the agency will be paid by applicants.

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:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed administrative regulation if in conflict:

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

(6) Any additional information or comments: These proposed amendments are made pursuant to 1994 changes in KRS 327.050 which separated the examination fee from licensure application fee. The examination filing deadline was changed from 45 days, to 8 weeks before the examination to permit the examination company to have braille exam prepared, if necessary. The board may also require a candidate to have information furnished on previous examinations taken elsewhere if necessary.

TIERING: Is tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:135. Fees.

RELATES TO: KRS 327.040(12), 327.050

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish fees required to apply [~~of applicants~~] for physical therapist (PT) licensure or physical therapist's assistant (PTA) certification [~~by endorsement~~], for examination, reinstatement, renewal or reexamination.

Section 1. Payment of Fees. (1) A renewal application may be paid by personal check.

(2) Other application fees shall be:

(a) Paid by:

1. Cashier's check; or
2. Certified check; or
3. Money order; and

(b) Made payable to the Kentucky State Treasurer; and

(3) Application fees shall not be refundable.

Section 2. Fees. [~~(1) Except as provided by Section 3 of this administrative regulation,~~] The fee for:

(1) [~~(a)~~] Physical therapist licensure and for physical therapist's assistant certification application [~~by examination~~] shall be $140 [~~230~~];

[~~(b) Endorsement application shall be $140;~~]

(2) [~~(c)~~] Reinstatement application shall be $105;

(3) [~~(2) The~~] Renewal application [~~fee~~] shall be $80;

(4) Examination [~~(3) The application fee for reexamination~~] shall be $185; and [~~147.50.~~]

(5) Reexamination shall be $210.

[~~(4) If an applicant failed to take or complete an examination for which he registered, he shall pay an additional $147.50 if he notifies the board that he wishes to register for another examination.~~

~~Section 3. Prorating of Fees. (1) If an application for licensure or certification by examination is filed on or after January 1, of an odd numbered year, the application fee for licensure and certification shall be:~~

~~(a) $230 if made in the first year of the biennial licensure period; and~~

~~(b) $190 if made in the second year of the biennial licensure.~~

~~(2) If an application for endorsement is filed on or after January 1 of an odd numbered year, the application fee for endorsement shall be:~~

~~(a) $140 if made in the first year of the biennial licensure period; and~~

~~(b) $100 if made in the second year of the biennial licensure.~~

~~(3) If an application for reinstatement is filed on or after January 1 of an odd numbered year, the application fee for reinstatement shall be:~~

~~(a) $105 if made in the first year of the biennial licensure period; and~~

~~(b) $65 if made in the second year of the biennial licensure.~~]

TOM A. PENNINGTON, Chairman

APPROVED BY AGENCY: May 13, 1994

FILED WITH LRC: June 10, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1994 at 10 a.m. at the Board Office, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, (502) 595-4687.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Brinly

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: Additional cost of $40 to each of approximately 80 licensure applicants in second 1/2 of licensure biennium; decrease of $22.50 in administrative cost passed on to persons being reexamined (10-15/year); and exam applicants pay fee which equals actual cost of the exam to the board vs. cost being part of application fee.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition): The actual cost of the examination will be passed on to each examinee. Examination cost to the board changing from $100 to $185/exam.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: By eliminating prorated fees, additional $2,400 revenue every other year.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: Exam cost to agency increasing but will be assumed by examinees. Cost of renting an exam site increasing from $160 to $550-$600.

(b) Reporting and paperwork requirements: No change.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(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: Changes in separating exam cost and application fees for examinees pursuant to

amendments to KRS 327.050 during 1994 session of the legislature.

TIERING: Is tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:020. Licensed nonfederal real property appraiser.

RELATES TO: KRS 324A.010, 324A.035, 324A.065

STATUTORY AUTHORITY: KRS 324A.035

NECESSITY AND FUNCTION: This regulation is necessary to comply with KRS Chapter 324A. The function of this administrative regulation is to establish the criteria for licensure as a nonfederal real property appraiser.

Section 1. The provisions of this administrative regulation shall not apply to persons who, prior to July 14, 1992 have engaged in the appraisal of real property for at least ten (10) years.

Section 2. Qualifications for Licensure. (1) An applicant shall be licensed as a nonfederal real property appraiser if he has:

(a) A:

1. High school diploma; or
2. General equivalency diploma;

(b) Applied to the board for licensure; and

(c) Paid the fees required by KRS 324A.065(2).

(2) A licensed nonfederal real property appraiser shall not be required to meet the conditions established for the:

(a) Certification of:

1. General real property appraisers; or
2. Residential real property appraisers; or

(b) Licensure of licensed real property appraisers.

Section 3. Licensed Nonfederal Real Property Appraiser: Restrictions. A licensed nonfederal real property appraiser shall not perform real property appraisals of property that is the subject of a federally related transaction as defined by Section 1(6) of 201 KAR 30:010.

Section 4. Written and Oral Communications. (1)(a) In a written or broadcast communication, a licensed nonfederal real property appraiser shall include the statement set out in paragraph (b) of this subsection.

(b) "Not licensed or certified to perform appraisals for any transactions requiring a licensed or certified appraiser pursuant to federal law or regulations [~~in federally related transactions~~]."

(2) A written or broadcast communication shall include:

(a) Appraisal reports;

(b) Advertisements; and

(c) Business cards and stationery.

(3) In a print advertisement, the statement shall be in letters at least fifty (50) percent the size of the largest letter in the advertisement.

(4) In a radio or television advertisement, the statement shall be stated clearly and understandably.

(5) In a television advertisement, the statement shall:

(a) Be written;

(b) If in letters that are all upper case, be eighteen (18) scan lines in size; and

(c) If both upper and lower case letters are used:

1. For upper case letters, be twenty four (24) scan lines in size;
2. For lower case letters, be eighteen (18) scan lines in size; and

(d) Appear on the screen at least:

1. Three (3) seconds for the first line of lettering; and
2. One (1) second for each additional line of lettering.

JED DETERS, Chairman

APPROVED BY AGENCY: May 20, 1994

FILED WITH LRC: May 23, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1994, at 9 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Contact Person: James P. Daniels

(1) Type and number of entities affected: Approximately 500 persons licensed as real estate appraisers in Kentucky.

(a) Direct and indirect costs or savings to those affected: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings the first year.
2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings the first year.
2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.
3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect anticipated on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no such 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: None

TIERING: Is tiering applied? No. Tiering was not applied because all appraisers are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:140. Transitional licensed real property appraiser.

RELATES TO: KRS 324.010, 324A.030, 324A.035, 324A.040, 324A.045, 324A.050, 324A.065

STATUTORY AUTHORITY: KRS 324A.035

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to establish a temporary class of transitional licensed real property appraiser.

Section 1. "Transitional licensed real property appraiser" means an appraiser who has fulfilled the requirements previously established by the board for transitional licensure and has been issued a transitional license by the board to appraise real property in connection with federally and nonfederally related transactions.

Section 2. (1) "Transitional licensed real property appraiser" is a type of appraiser.

(2) A transitional licensed real property appraiser may perform appraisals of:

(a) Noncomplex, one (1) to four (4) residential units that have a transaction value of less than $1,000,000;

(b) Complex, one (1) to four (4) residential units that have a transaction value of less than $250,000; and

(c) Nonresidential real property that has a transaction value of less than $250,000.

Section 3. A transitional licensed real property appraiser shall comply with the "Uniform Standards of Professional Appraisal Practice".

Section 4. A transitional licensed real property appraiser license issued by the board shall automatically expire two (2) years after the date of its issuance by the board and the license shall not be renewable.

Section 5. A transitional licensed real property appraiser license issued by the board shall automatically expire six (6) months from the effective date of this administrative regulation, if the licensee does not provide the board with proof of having obtained at least seventy-five (75) hours of approved appraisal education or at least 2,000 hours of appraisal experience within six (6) months of the effective date of this administrative regulation.

Section 6. [~~5.~~] The board shall not administer examinations for transitional real property appraiser after the effective date of this administrative regulation.

Section 7. [~~6.~~] The board shall not issue any additional licenses for transitional real property appraiser after the effective date of this administrative regulation.

JED DETERS, Chairman

APPROVED BY AGENCY: May 20, 1994

FILED WITH LRC: May 23, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1994, at 9 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Contact Person: James P. Daniels

(1) Type and number of entities affected: Approximately 152 persons licensed as a transitional licensed real estate appraiser in Kentucky.

(a) Direct and indirect costs or savings to those affected: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings the first year.

2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings the first year.

2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect anticipated on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no such 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: None

TIERING: Is tiering applied? No. Tiering was not applied because all appraisers are treated uniformly under the law.

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

301 KAR 3:022. License, tag and [,] permit[~~, and stamp~~] fees.

RELATES TO: KRS 150.175, 150.180, [~~150.190, 150.200,~~] 150.225, 150.235, 150.240, 150.280, 150.290, 150.485, 150.525, 150.603, 150.520, 150.630, 150.660, 150.670, 150.990, 1994 Ky. Acts ch. 239

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021,

150.170, 150.175, 150.180, [~~150.190~~], 150.225, 150.240, 150.280, 150.485, 150.525, 150.603, 150.620, 150.660, 150.670, 1994 Ky. Acts ch. 239

NECESSITY AND FUNCTION: The commissioner, with the concurrence of the Fish and Wildlife Resources Commission, finds it necessary to establish the fee schedule in this regulation to generate the necessary funds to finance programs to protect, manage, and conserve the fish and wildlife resources of the state so a permanent and continued supply will be maintained for the benefit of present and future generations. This amendment is necessary to reduce the commercial wildlife and fisheries pet and propagation permit fees, eliminate the fish transportation permit fee, add waterfowl stamp and pond stocking fees and eliminate the fishery pet permit fee.

Section 1. Licenses, tags, and permits [~~and stamps~~] listed in this section shall be valid from March 1 through the last day of February the following year.

(1) Sport fishing licenses:

(a) Statewide fishing license (resident): $12.50.

(b) Statewide fishing license (nonresident): $30.

(c) Joint statewide fishing license (resident): $22.50.

(d) Trout permit [~~stamp~~] (resident or nonresident): $5.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: $100.

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $500.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of 10 tags: $10.

(b) Commercial fishing gear tags (nonresident) block of 10 tags: $75.

(4) Hunting licenses:

(a) Statewide hunting license (resident): $12.50.

(b) Statewide hunting license (nonresident): $95.

(c) Statewide junior hunting license (resident or nonresident): $6.25.

(d) Statewide waterfowl permit (resident or nonresident) $7.50

(5) Combination hunting and fishing license (resident): $20.

(6) Trapping licenses:

(a) Trapping license (resident): $15.

(b) Trapping license (resident landowner/tenant): $7.50.

(c) Trapping license (nonresident): $115.

(7) Big game permits:

(a) Big game permit, deer (resident or nonresident): $21.

(b) Junior big game permit, deer (resident or nonresident): $12.50.

(c) Big game permit, turkey (resident or nonresident): $17.50.

Section 2. Licenses, tags and [,] permits, [~~and stamps~~] listed in this section shall be valid for the calendar year in which they are issued.

(1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): $30.

(b) Live fish and bait dealer's license (nonresident): $60.

(2) Commercial mussel licenses:

(a) Musseling license (resident): $300.

(b) Musseling license (nonresident): $1500.

(c) Mussel buyer's license (resident): $500.

(d) Mussel buyer's license (nonresident): $1500.

(3) Commercial taxidermist license: $100.

(4) Commercial guide licenses:

(a) Commercial guide license (resident): $100.

(b) Commercial guide license (nonresident): $250.

(5) Fur dealer's licenses:

(a) Fur processor's license (resident): $150.

(b) Fur buyer's license (resident): $50.

(c) Fur buyer's license (nonresident): $230.

(6) Nonresident hunting preserve license: $10.

(7) Shooting preserve permit: $100.

(8) Commercial fox hound training enclosure permit: $250.

(9) Collecting permits:

(a) Educational wildlife collecting permit: $10.

(b) Scientific wildlife collecting permit: $200.

(10) Food permits:

(a) Food permit for selling bobwhite quail from propagation farms only: $150.

(b) Retail food permit for propagated quail: $5.

(11) Pay lake license:

(a) First two (2) acres or less: $100.

(b) Per additional acre or part of acre: $20.

(12) Bird dog training device permit: $10.

Section 3. Licenses, tags and [,] permits [~~and stamps~~] listed in this section shall be valid for one (1) year from the date of issue:

[~~(1) Pet and propagation permits:~~]

(1) Commercial wildlife pet and propagation permit: $100 [~~200~~].

[~~Fishery pet permit: $10.~~]

(2) Commercial fish propagation permit: $50 [~~100~~].

[~~(2) Fish transportation permit: $25.~~]

Section 4. Licenses, tags and [,] permits [~~and stamps~~] listed in this section shall be valid for three (3) years from the date of issue.

(1) Falconry permit: $45.

(2) Noncommercial wildlife pet and propagation permit: $75.

Section 5. Licenses, tags and [,] permits [~~and stamps~~] listed in this section shall be valid for the date or dates specified on each.

(1) Short-term nonresident licenses:

(a) Three (3) day fishing license: $12.50.

(b) Fifteen (15) day fishing license: $20.

(c) Five (5) day hunting license (not valid for big game): $27.50.

(d) Three (3) day fur bearer's license: $40.

(2) Wildlife transportation permit: $25.

(3) Special commercial fishing permit: $500.

(4) Commercial waterfowl shooting area permit: $100.

(5) Shoot to retrieve field trial permits:

(a) Per trial (maximum four (4) days): $50.

(b) Single day: $15.

Section 6. Licenses, tags and [,] permits [~~and stamps~~] listed in this section shall be valid on a per unit basis as specified.

(1) Bird bands (each): $.25.

(2) Ballard waterfowl hunt (per person, per day): $15.

(3) Horse stall rental (per space, per day): $2.

(4) Dog kennel rental (per dog, per day): $.50.

(5) Conservation education camp fee: $50.

(6) Pond stocking fee (per stocking): $25.

Section 7. Except for scientific or educational collecting permits as specified in 301 KAR 4:070 the licenses, tags and [,] permits [~~and stamps~~] authorized by this administrative regulation shall not be changed, altered, or defaced in any manner. All licenses, tags and [,] permits [~~and stamps~~] are nontransferable.

Section 8. These fees shall apply to all licenses, tags and [,] permits [~~and stamps~~] issued with an effective beginning date on or after January 1, 1995 [~~1993~~].

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on July 28, 1994, at 9 a.m. at The Department of Fish and Wildlife Resources Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by July 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, KY 40601, (502) 564-3400.

REGULATORY IMPACT ANALYSIS

Agency Contact: C. Thomas Bennett

(1) Type and number of entities affected: Approximately 110 pet permit holders, 15 commercial fish propagation permit holders, 58 Fish transportation permit holders, 500 ponds stocking applicants, and three fisheries pet permit holders will be affected by the amendments to this administrative regulation.

(a) Direct and indirect costs to those affected:

1. First year: Reduction of pet permit fees by $100; reduction of commercial fish propagation fee by $50; elimination of $25 fee for fish transportation permit; increase of $15 for pond stocking fee; elimination of requirement for $10 fisheries pet permit.

2. Continuing costs: (same as above for every year thereafter).

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Elimination of fisheries pet permit will reduce paperwork for those who hold undersized fish. No other changes in paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs:

1. First year: Assuming the number of permits sold remains constant, the net impact of these amendments will create a net decrease in agency revenues of $5,700.

2. Continuing costs: (Same as above for every year thereafter).

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Elimination of fishery pet permit and fees for fish transportation permit will cause a slight decrease in reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: Since these permits are issued through the central offices of the department, there should be no impact on local revenues. The Game and Fish Fund will see a net increase of approximately $5,700 annually.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only feasible alternative is keeping these fees the same. This was rejected because adjustment or elimination is necessary.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes in conflict with this proposed regulation. However, minor changes will be made by subsequent amendment to 301 KAR 1:115, Propagation of fish, frogs, crayfish or aquatic organisms, to eliminate the requirement for a fisheries pet permit.

(a) Necessity of proposed regulation if in conflict: The Fish and Wildlife Commission approved the changes reflected in the regulation. The conflicting section of 301 KAR 1:115 does not reflect current commission or departmental policy and will be resolved.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Such efforts will be made as soon as practical.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All fee changes represented in this amendment apply to all who apply for the permits in question.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 50:035. Permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.10-120, 401 KAR Chapters 50 through 65, 40 CFR Parts 52, 60, 70, 72, 73, 75, 77, 78, 42 USC 7401-7671q, July 21, 1993 Federal Register (57 FR 32250)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation combines construction and operating permits into one (1) permit and provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as [~~otherwise~~] provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 42 USC 7651 through 7651o and 40 CFR Parts 72, 73, 75, 77, and 78. 40 CFR Parts 72, 73, 75, 77, and 78 are incorporated by reference in Section 11 of this administrative regulation.

(2) "Act" means the Clean Air Act promulgated at 42 USC 7401 through 7671q, as amended by PL 101-549 (November 15, 1990).

(3) "Administrative permit amendment" means a revision to a permit that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source if the cabinet determines that no other change in the permit is necessary and if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the cabinet;

(e) Incorporates into the permit the requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those prescribed in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements substantially equivalent to those contained in Section 4(3) of this administrative regulation.

(4) "Affected source" means a source that includes one (1) or more affected units.

(5) "Affected states" means those states:

(a) That border Kentucky and whose air quality may be affected by the proposed issuance, revision, or renewal of a permit subject to the federally enforceable requirements of this administrative regulation; or

(b) That are within fifty (50) miles of the proposed permitted source.

(6) "Affected unit" means a unit that is subject to the acid rain program.

(7) "Applicable requirement" means a federally enforceable requirement or a state-origin requirement or standard.

(8) "Classification date" means the date on which the U.S. EPA publishes a final rule granting full, partial, or conditional approval to Kentucky's Permit Program submitted pursuant to 42 USC 7661 through 7661f (Title V of the Act).

(9) [~~(8)~~] "Complete application" means an application for a permit or permit revision that meets the requirements of Section 3(1)(b) of this administrative regulation.

(10) "Conditional major source" means a source that accepts a limit on a federally enforceable permit which prevents it from being classified as a major source as defined in this administrative regulation, if the limit is not a federally enforceable requirement.

(11) [~~(9)~~] "Designated representative" means a responsible person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program. For matters related to the acid rain portion of a permit, the term "responsible official," as used in this administrative regulation or in administrative regulations implementing the acid rain program, means the "designated representative."

(12) [~~(10)~~] "Draft permit" means the version of a permit which the cabinet offers for public participation and affected state review as prescribed in Sections 7 and 8 of this administrative regulation.

(13) [~~(11)~~] "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(14) [~~(12)~~] "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038.

(15) [~~(13)~~] "Emissions unit" means a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant. This term does not alter or affect the definition of the term "unit" as used in the acid rain program.

(16) [~~(14)~~] "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to November 29, 1993 [~~the effective date of this administrative regulation,~~] or source that is authorized by the cabinet to operate on or before the effective date of this administrative regulation.

(17) [~~(15)~~] "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision and is required by the U.S. EPA to be federally enforceable.

(18) [~~(16)~~] "Federally enforceable requirement" means all of the following as they apply to emissions units at a source which is subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:

(a) Standards or requirements in the State Implementation Plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 USC 7401 thorough 7515 (Title I of the Act).

(c) A standard or other requirement promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7429 (Section 129 of the Act) governing solid waste incineration.

(d) A standard or other requirement promulgated pursuant to 42 USC 7412 (Section 112 of the Act)[~~, including a requirement for accidental release prevention pursuant to 42 USC 7412(r) (Section 112(r) of the Act)~~].

(e) Standards or requirements of the acid rain program.

(f) Requirements established pursuant to 42 USC 7661c(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification.

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661c(e) (Section 504(e) of the Act).

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act).

(i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act).

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 through 7671q (Title VI of the Act), unless the U.S. EPA determines that those requirements need not be contained in the permit.

(19) [~~(17)~~] "Final permit" means:

(a) For a federally enforceable permit, the version of a permit issued by the cabinet that has completed all the review procedures required in Sections 7 through 9 of this administrative regulation and for which a final determination has been made.

(b) For a state-origin permit, the version of a permit which meets the applicable provisions of this administrative regulation and for which a final determination has been made.

(20) [~~(18)~~] "Fugitive emissions" means those emissions which could not reasonably [~~do not~~] pass through a stack, chimney, vent, or other functionally-equivalent opening.

(21) [~~(19)~~] "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.

(22) [~~(20)~~] "Major source" means a stationary source, or a group of stationary sources, that are located on one (1) property or two (2) or more contiguous or adjacent properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping which emits a regulated air pollutant and which is described in paragraphs (a), (b), or (c) of this subsection.

(a) On or after the classification date, a stationary or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant listed in 401 KAR 57:061 or twenty-five (25) tons per year or more of a combination of hazardous air pollutants listed in 401 KAR 57:061, or a lesser quantity established by the U.S. EPA and promulgated in an administrative regulation in 401 KAR Chapter 57. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources.

(b) A stationary source of air pollutants that directly emits or has the potential to emit, 100 tons per year or more of an air pollutant. The fugitive emissions of a stationary source shall be considered in determining if it is a major source only if it belongs to one (1) he following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric, sulfuric, or nitric acid plants;

10. Petroleum refineries;

11. Lime plants;

12. Phosphate rock processing plants;

13. Coke oven batteries;

14. Sulfur recovery plants;

15. Carbon black plants (furnace process);

16. Primary lead smelters;

17. Fuel conversion plant;

18. Sintering plants;

19. Secondary metal production plants;

20. Chemical process plants;

21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or

27. All other stationary source categories subject to an administrative regulation in 401 KAR Chapters 59 and 61 which are promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or a national emission standard for hazardous air pollutants (NESHAP) in 401 KAR Chapter 57, promulgated pursuant to 42 USC 7412 (Section 112 of the Act).

(c) A major stationary source defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act) including:

1. For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;"

2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and

3. For particulate matter (PM_{10}) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM_{10}.

(23) [~~(21)~~] "Minor source" means a stationary source that is required to obtain a permit pursuant to this administrative regulation and that is not a major source.

(24) [~~(22)~~] "Permit revision" means a minor permit revision, a significant permit revision, or an administrative permit amendment.

(25) [~~(23)~~] "Phase II" means the acid rain program period beginning January 1, 2000, and continuing thereafter.

(26) [~~(24)~~] "Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable [~~by the U.S. EPA~~]. This term does not alter or affect the use of this term for other purposes in the Act, or the term "capacity factor" as used in the acid rain program.

(27) [~~(25)~~] "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(28) [~~(26)~~] "Regulated air pollutant" means the following:

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which an ambient air quality standard has been promulgated in 401 KAR 53:010;

(d) A pollutant that is subject to a standard promulgated pursuant to 42 USC 7411 and 7412 (Sections 111 and 112 of the Act);

(e) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 USC 7671 through 7671q (Title VI of the Act);

(f) A pollutant listed in 401 KAR 57:061; and

(g) A pollutant listed in 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.

(29) [~~(27)~~] "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 5(7) of this administrative regulation.

(30) [~~(28)~~] "Responsible official" means one (1) of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA); or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(31) [~~(29)~~] "Section 502(b)(10) changes" means changes that contravene an express permit term. These changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(32) [~~(30)~~] "Significant permit revision" means a permit revision required to be processed pursuant to Section 6(2)(c) of this administrative regulation.

(33) [~~(31)~~] "State implementation plan (SIP)" means the most recently prepared plan or revision required by 42 USC 7410 (Section 110 of the Act) which has been submitted by the cabinet and approved by the U.S. EPA.

(34) [~~(32)~~] "State-origin permit" means a permit that contains only state-origin requirements, or that contains federally enforceable requirements but is not required by the U.S. EPA to be a federally enforceable permit. [~~permit conditions. If the permit contains one (1) or more federally enforceable permit conditions it is a federally enforceable permit.~~]

(35) [~~(33)~~] "State-origin permit condition" means a provision in the permit that is not required pursuant to 42 USC 7401 through 7671q (the Act) or any of the Act's applicable requirements, and that is not federally enforceable.

(36) [~~(34)~~] "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated air pollutant.

(37) "Synthetic minor source" means a source that accepts a limit on a federally enforceable permit which prevents it from being classified as a major source as defined in either 401 KAR 51:017 or 401 KAR 51:052, if the limit is not a federally enforceable requirement.

(38) [~~(35)~~] "Timely application" means an application that meets

the requirements of Section 3(1)(a) of this administrative regulation.

Section 2. Applicability. This administrative regulation shall apply to owners and operators of all air pollution sources, except as follows:

(1) A source shall be exempt from this administrative regulation if:

(a) The source is a minor source and is not subject to an applicable requirement; or

(b) The source is a minor source that:

1. Has uncontrolled emissions of less than twenty-five (25) tons per year and potential emissions of five (5) tons per year or less of a pollutant for which an ambient air quality standard is listed in 401 KAR 53:010, or a lesser amount if specified in an applicable requirement; and

2. Has potential emissions of less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061 or a lesser amount specified in an applicable requirement; and

3. Is not subject to a requirement in 40 CFR Part 60, 40 CFR Part 61, 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022; and

4. Is not required by the U.S. EPA to obtain a permit.

(2) The following activities and affected facilities at a source shall be exempt from this administrative regulation if the activity is not the same or similar to the primary activity of the source.

(a) Activities involving the routine maintenance and repair of a facility, including cleaning, painting, welding, sweeping, vacuuming, steam cleaning, washing, coating,or sandblasting.

(b) Food preparation for on-site consumption.

(c) Heating, ventilation, air conditioning, and refrigeration systems.

(d) Clerical activities, including the use of office supplies and equipment.

(e) Sewer line vents constructed to meet building codes or safety requirements.

(f) Publicly owned roads.

(3) The following activities and affected facilities shall be exempt from this administrative regulation, but they shall not be exempt from compliance with applicable standards in other administrative regulations in 401 KAR Chapters 50 through 63. The cabinet may require the owner or operator to demonstrate compliance with all applicable administrative regulations.

(a) An asbestos demolition or renovation operation which is subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042.

(b) An affected facility which is subject only to the provisions of 40 CFR Part 60, Subpart AAA.

(c) A vehicle used for the transport of passengers or freight.

(d) An affected facility subject only to the provisions of 401 KAR 63:005.

(e) Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement.

(f) Fire schools or fire training activities.

(g) The installation of air pollution control equipment if none is required. The owner or operator shall notify the cabinet in writing prior to installing the equipment.

(h) Alteration or modification of air pollution control equipment to provide an equivalent or more efficient control of air pollution. The owner or operator shall notify the cabinet in writing for the cabinet's concurrence at least forty-five (45) days before installation of the control equipment.

(4) If requested by a source, the following affected facilities may also be exempt from this administrative regulation. The cumulative emissions from the units exempted in this paragraph shall not exceed five (5) tons per year. The emissions from these units shall not be excluded from the permit application for a source if the emissions are necessary to determine compliance with an applicable requirement or to determine if a requirement is applicable.

(a) An incinerator with a charging rate of less than 500 pounds per hour, unless it is subject to 401 KAR 51:017, 401 KAR 51:052, Title 401 Chapter 57, 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.

(b) One (1) or more indirect heat exchangers, with a rated total heat input capacity of less than eight (8) million BTU per hour which use natural gas or liquid petroleum gas as a main fuel and which use only distillate fuel oil as a standby fuel, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(c) An individual addition of a natural gas or liquid petroleum gas-fired boiler having an individual rated heat input capacity of less than eight (8) million BTU per hour, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(d) An internal combustion engine, except as provided in 401 KAR 59:019.

(e) A feed grain mill having a hammermill with a rated capacity of ten (10) tons per hour or less, if the source does not include a grain dryer.

(f) A sawmill which produces only rough cut or dimensional lumber from logs and which has a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an administrative regulation in 401 KAR Chapters 59 or 61.

(5) Owners or operators of a source may petition the cabinet to exempt other activities or affected facilities, subject to approval by the cabinet and the U.S. EPA.

(6) The following de minimis changes shall be exempted from the requirement to obtain a permit or permit revision.

(a) Prior to the classification date, affected facilities which are part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of each of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides, and carbon monoxide, if the increase does not subject the source to an administrative regulation. The owner or operator shall notify the cabinet in writing of the increases and construction projects thirty (30) days prior to commencing construction. This exemption shall not apply to affected facilities which are subject to a regulation in 401 KAR Chapter 57; 40 CFR 60; 401 KAR 63:020, 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for the pollutants in 401 KAR 51:010; or to incinerators.

(b) After the classification date, the exemption in paragraph (a) of this subsection shall not apply to sources that are required to obtain a federally enforceable permit pursuant to 40 CFR Part 70.

~~[(1) A source shall be exempt from this administrative regulation if:~~

~~(a) The source is a minor source and is not subject to an applicable requirement; or~~

~~(b)1. The source is subject only to the requirements of 401 KAR 53:010 and has uncontrolled emissions of less than twenty-five (25) tons per year and potential emissions of five (5) tons per year or less of a pollutant for which an ambient air quality standard is listed in 401 KAR 53:010, or less than the significant net emissions rate pursuant to 401 KAR 51:017, whichever is less; and~~

~~2. The source has potential emissions of less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061; and~~

~~3. The source is not subject to 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.~~

~~(2) The following affected facilities and activities shall also be exempt from this administrative regulation, but they shall not be exempt from compliance with applicable standards in other administrative regulations in 401 KAR Chapters 50 through 63. The cabinet may require the owner or operator to demonstrate compliance with all applicable administrative regulations.~~

~~(a) An asbestos demolition or renovation operation which is subject only to the provisions of 40 CFR Part 61, Subpart M or 401~~

~~KAR 63:042.~~

~~(b) An affected facility which is subject only to the provisions of 40 CFR Part 60, Subpart AAA.~~

~~(c) A vehicle used for the transport of passengers or freight.~~

~~(d) An affected facility subject only to the provisions of 401 KAR 63:005.~~

~~(e) A publicly owned road.~~

~~(f) The installation of air pollution control equipment where none is required. The owner or operator shall notify the cabinet in writing prior to installing the equipment.~~

~~(g) Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement.~~

~~(h) An incinerator with a charging rate of less than 500 pounds per hour, unless it is subject to an administrative regulation in 401 KAR Chapters 50 through 63.~~

~~(i) A direct-fired source used for heating and ventilating.~~

~~(j) One (1) or more indirect heat exchangers, with a rated total heat input capacity of less than fifty (50) million BTU per hour which use natural gas or liquid petroleum gas as a main fuel and which use only distillate fuel oil as a standby fuel, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.~~

~~(k) An individual addition of a natural gas or liquid petroleum gas-fired boiler having an individual rated heat input capacity of less than fifty (50) million BTU per hour, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.~~

~~(l) An internal combustion engine, except as provided in 401 KAR 59:019.~~

~~(m) A feed grain mill having a hammermill with a rated capacity of ten (10) tons per hour or less, if the source does not include a grain dryer.~~

~~(n) A sawmill which produces only rough cut or dimensional lumber from logs and which has a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an administrative regulation in 401 KAR Chapters 59 or 61.~~

~~(3) The total emissions from the affected facilities and activities at a source, which are exempted from this administrative regulation pursuant to subsection (2)(h) through (n) of this section, shall not exceed five (5) tons per year. These emissions shall not be excluded from the permit application to the extent that the emissions are necessary to determine compliance with an applicable requirement or to determine if a requirement is applicable.]~~

Section 3. Permit Applications. (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this section using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. The cabinet may provide methods for electronic transmission of the completed application.

(a) Timely applications.

1. Existing major sources.

a. Sources proposing to accept permit limitations to become synthetic minor or conditional major sources shall file a complete application to obtain a permit. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5 of this administrative regulation. [~~One third (1/3) of the existing major sources with the lowest score, as determined pursuant to Section 10 of this administrative regulation, shall file a complete application for a permit within twelve (12) months after the effective date of this administrative regulation. The cabinet shall notify these sources within fifteen (15) days after the effective date of this administrative regulation.~~]

b. All other existing major sources shall file a complete application for a permit within twelve (12) months after the classification date or within twelve (12) months after the source is required to obtain a federally enforceable permit pursuant to 40 CFR Part 70, whichever date is earlier. [~~date the U.S. EPA publishes a final rule approving the state permit program.~~]

c. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(1)(b) [~~(2)~~] of this administrative regulation.

2. Existing minor sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. An existing minor source shall file a complete application for a permit within twelve (12) months after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit or within five (5) years after the classification date, whichever date is earlier. These applications shall be processed as federally enforceable permits pursuant to Section 5(1)(b) [~~(2)~~] of this administrative regulation.

3. Existing minor sources required to have a state origin permit [~~subject to a state origin requirement~~]. An existing source that is [~~Sources which are~~] required to have a state-origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to an applicable requirement promulgated after the effective date of this administrative regulation, or by November 15, 2000, whichever date is earlier. The cabinet shall process these applications as state origin [~~enforceable~~] permits pursuant to Section 5(1)(c) [~~(3)~~] of this administrative regulation[~~, unless the source requests to have the permit processed as a federally enforceable permit~~].

4. An existing source that constructs, reconstructs an affected facility, alters, or modifies prior to the date the source is required to submit a complete application for the entire source shall file an application using Form DEP 7007 to obtain a permit for the proposed change prior to commencing construction or modification. [~~A source constructing, reconstructing, or modifying after the effective date of this administrative regulation shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, or modification, except as provided in Section 6 of this administrative regulation.~~

~~a.~~] The applications for these sources [~~that are required by the U.S. EPA to obtain federally enforceable permits~~] shall be processed by the cabinet pursuant to Section 5(2) of this administrative regulation.

[~~b. The applications for sources that are required to obtain state-origin permits shall be processed by the cabinet pursuant to Section 5(3) of this administrative regulation.~~]

5. A source constructing, reconstructing, altering or modifying after November 29, 1993, shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, alteration, or modification, except as provided in subparagraph 4 of this paragraph and Section 6 of this administrative regulation. The cabinet shall process these applications pursuant to Section 5(3) of this administrative regulation.

6. [~~5.~~] A source that is required to open an existing permit pursuant to the requirements of Section 6(3) of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after notification by the cabinet that the permit shall be reopened.

7. [~~6.~~] For permit renewal, an application shall be submitted at least six (6) months prior to the date of permit expiration and in accordance with Section 5(7) of this administrative regulation.

8. [~~7.~~] Applications for initial Phase II acid rain permits shall be submitted to the cabinet by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(b) Complete application.

1. To be deemed complete, an application shall provide all information required pursuant to subsection (3) of this section, except that applications for a permit revision shall supply the information only if it is related to the proposed change. This information shall be sufficient to evaluate the source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information pursuant to subsection (4) of this section.

2. The cabinet shall promptly provide notice to the applicant if the

application is complete. Unless the cabinet mails a request for additional information or a notice of incompleteness to the applicant within sixty (60) days of receipt of an application, the application shall be deemed complete.

3. If, while processing an application that has been determined or deemed to be complete, the cabinet determines that additional information is necessary, it may require [~~request~~] the information in writing and set a reasonable deadline for response.

4. For permit revisions processed through minor permit revision procedures, pursuant to Section 6(2)(a) of this administrative regulation, a completeness determination shall not be required.

(c) Confidential information. A source that submits to the cabinet an application for a federally enforceable permit containing a claim of confidential information shall authorize the cabinet to submit the information to the U.S. EPA, or shall submit a copy of the information directly to the U.S. EPA.

(2) Duty to supplement or correct application. An applicant who fails to submit relevant facts or who has submitted incorrect information in a permit application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information. The applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it filed a complete application but prior to issuance of a draft permit. Failure to supplement or correct the application shall be a violation of this administrative regulation and shall cause the source to be subject to applicable penalties, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

(3) Standard application form and required information.

(a) Applications for required permits shall be made on Form DEP 7007 which is incorporated by reference in 401 KAR 50:034. The applicant may submit the application using computer software if the cabinet has provided for the electronic preparation of applications.

(b) An application shall include all information needed to determine the applicability of or to impose an applicable requirement and to evaluate the required fee amount pursuant to 401 KAR 50:038.

(c) The application and attachments shall include the company name and address or, if different, the plant name and address; owner's and agent's name and address; name, address, and telephone number of the plant site manager or contact; a description of the source's processes and products by Standard Industrial Classification (SIC) Code, which is incorporated by reference in 401 KAR 51:017, including any associated with alternate scenarios identified by the source; and all of the elements specified in paragraphs (d) through (j) below:

(d) The application shall provide the following emissions-related information:

1. All emissions for which the source is major and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from an emissions unit, unless the units are exempted in Section 2[~~(2)~~] of this administrative regulation. The applicant shall also provide any additional information related to the emissions of air pollutants necessary to verify which requirements are applicable to the source, and other information necessary to collect permit fees owed under the fee schedule approved pursuant to 401 KAR 50:038.

a. For major sources, the applicable requirements for all emissions units shall be identified in the permit application.

b. For minor sources required to obtain a permit, all applicable requirements for the emissions units that cause the source to be subject to 40 CFR Part 79 [~~this administrative regulation~~] shall be identified in the permit application. The cabinet may identify the applicable requirements for other minor sources prior to determining completeness of the application pursuant to subsection (1)(b) of this section.

c. Fugitive emissions from a source shall be identified in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(22) [~~(20)~~](b) of this administrative regulation.

2. Identification and description of all points of emissions described in subparagraph 1 of this paragraph in sufficient detail to establish the basis for fees and applicable requirements.

3. Emissions rates in tons per year and in terms necessary to establish compliance consistent with the applicable standard reference test method. These methods are incorporated by reference in 401 KAR 50:015 or in the applicable administrative regulations.

4. Fuels, fuel use, raw materials, production rates, and operating schedules, to the extent needed to determine or limit emissions.

5. Identification and description f air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, if applicable, for all regulated air pollutants at the source.

7. Other information required by an applicable requirement, including information related to stack height limitations developed pursuant to 401 KAR 50:042.

8. Calculations on which the information in subparagraphs 1 through 7 of this paragraph is based.

(e) The application shall identify the following air pollution control requirements, except as provided in paragraph (d)1b of this subsection:

1. Citation and description of all applicable requirements; and

2. Description of or reference to the applicable test method for determining compliance with each applicable requirement.

(f) The application shall provide other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of these requirements.

(g) The application shall provide an explanation of proposed exemptions from otherwise applicable requirements.

(h) The application shall provide additional information required by the cabinet to define alternative operating scenarios identified by the source pursuant to Section 4(1)(i) of this administrative regulation, or to define permit terms and conditions implementing Section 4(1)(j) of this administrative regulation.

(i) The application shall provide a compliance plan containing the following:

1. A description of the compliance status of the source for all applicable requirements as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements.

b. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with those requirements.

2. A compliance schedule as follows:

a. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the applicable requirement.

b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

3. A schedule for submission of certified progress reports, pursuant to Section 4(3)(d) of this administrative regulation, no less

frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

4. In Phase II of the acid rain program, the compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as provided in the acid rain program for the schedule and method the source will use to achieve compliance with the acid rain emissions limitations.

(j) The application shall identify requirements for compliance certification, including the following:

1. A certification of compliance with all applicable requirements by a responsible official pursuant to subsection (4) of this section;

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and

4. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.

(4) Certification by responsible official. Application forms, reports, and compliance certifications submitted pursuant to this administrative regulation shall contain a certification by a responsible official, as defined in Section 1(28) of this administrative regulation, of truth, accuracy, and completeness. The certifications required in this administrative regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Section 4. Permit Content. (1) Standard permit requirements. A permit issued pursuant to this administrative regulation shall include the following elements:

(a) Emission limitations and standards, including operational requirements and limitations that assure compliance with applicable requirements at the time of permit issuance. This shall include:

1. The origin of and authority for each term or condition, and any variation from the applicable requirement upon which the term or condition is based;

2. A statement that the source shall comply with all applicable requirements;

3. If the state implementation plan (SIP) allows the determination of an alternative emission limit that is equivalent to the limit contained in the plan to be made in the permit issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination shall contain conditions to ensure that the resulting emissions limit has been demonstrated to be permanent, quantifiable, accountable, enforceable, and based on replicable procedures. The cabinet shall not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP or that are otherwise federally enforceable;

4. For major sources, all applicable requirements for emissions units;

5. For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation; and

6. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(22) [~~(20)~~](b) of this administrative regulation.

7. The permit shall state that if an applicable requirement of 42 USC 7401 through 7671q is more stringent than an applicable requirement promulgated pursuant to 42 USC 7651 through 7651o, both provisions shall be placed in the permit and shall be federally enforceable.

(b) Permit duration and renewal. A statement shall be included which provides that the permit shall expire and shall be renewed pursuant to Section 5(7) of this administrative regulation.

(c) Monitoring and related recordkeeping and reporting requirements.

1. Each permit shall contain the following monitoring requirements:

a. All emissions monitoring and analysis procedures or test methods required in the applicable requirements including those specified in 42 USC 7414(a)(3) or 7661c(b) (Sections 114(a)(3) or 504(b) of the Act);

b. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit, as reported pursuant to subparagraph 3 of this paragraph. Monitoring requirements shall assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this sentence; and

c. Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate.

2. Each permit shall incorporate the following recordkeeping requirements, if applicable:

a. Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The dates analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of analyses; and

(vi) The operating conditions at the time of sampling or measurement;

b. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

3. Each permit shall incorporate the following reporting requirements, if applicable:

a. Submittal of required monitoring reports at least every six (6) months. All deviations from permit requirements shall be clearly identified in the reports, and all reports shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

b. Prompt reporting of deviations from permit requirements, including those attributed to upset conditions, the probable cause of the deviations, and corrective actions or preventive measures taken. The cabinet shall define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements.

(d) A permit condition prohibiting emissions exceeding allowances that the source lawfully holds in the acid rain program.

1. A permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the acid rain program if the increases do not require a permit revision in another applicable requirement.

2. A limit shall not be placed on the number of allowances held by the source. However, a source shall not be allowed to use allowances in defense of noncompliance with an applicable requirement.

3. Allowances shall be accounted for according to the procedures established in 40 CFR Part 73, which is incorporated by reference in Section 11 of this administrative regulation.

(e) A severability clause to ensure the continued validity of the

various permit requirements in the event of a challenge to portions of the permit.

(f) Provisions stating the following:

1. The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and, for federally enforceable permits, is also a violation of 42 USC 7401 through 7671q (the Act) and is grounds for an enforcement action, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.

3. The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.

4. The permit shall not convey property rights or exclusive privileges.

5. The permittee shall furnish to the cabinet information that the cabinet may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the cabinet copies of records required to be kept by the permit.

(g) A provision to ensure that the source shall pay the fees to the cabinet pursuant to the approved fee schedule in 401 KAR 50:038.

(h) Emissions trading. A provision stating that a permit revision shall not be required in approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(i) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the cabinet. The terms and conditions:

1. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario in which it is operating;

2. Shall extend the permit shield described in subsection (6) of this section to all terms and conditions in each operating scenario; and

3. Shall ensure that the terms and conditions of each alternative scenario meet all applicable requirements.

(j) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of other applicable requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The cabinet shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are not replicable procedures to enforce the emissions trades. The terms and conditions:

1. Shall include all terms required in subsections (1) and (3) of this section to determine compliance;

2. Shall extend the permit shield described in subsection (6) of this section to all terms and conditions that allow increases and decreases in emissions; and

3. Shall meet all applicable requirements and the requirements of this administrative regulation.

4. Shall require written notification to the cabinet and the U.S. EPA seven (7) days in advance of the proposed change. The source, cabinet and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(2) Federally enforceable requirements. The cabinet shall include a notification in a federally enforceable permit that all terms and conditions in the permit, except the provisions that are specifically designated as state-origin requirements [~~permit conditions~~], shall be enforceable by the U.S. EPA and citizens.

(3) Compliance requirements. All permits shall contain the following elements for compliance:

(a) Pursuant to subsection (1)(c) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

(b) Requirements that the permittee shall allow the cabinet or an authorized representative to perform the following:

1. Enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept;

2. Have access to and copy, at reasonable times, any records required by the permit:

a. During normal office hours; and

b. During periods of emergency when prompt access to records is essential to proper assessment by the cabinet; and

3. Inspect, at reasonable times, any facilities, equipment, (including monitoring and air pollution control equipment), practices, or operations required by the permit. Reasonable times shall include, but not be limited to the following:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

4. Sample or monitor, at reasonable times, substances or parameters to assure compliance with the permit or any applicable requirements. Reasonable times shall include, but not be limited to the following:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

(c) A schedule of compliance as required in Section 3(3)(i)2 of this administrative regulation.

(d) Progress reports on the schedule of compliance required in paragraph (c) of this subsection to be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the cabinet. Progress reports shall contain the following:

1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance were achieved; and

2. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.

(e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

1. The frequency, as specified in an applicable requirement or by the cabinet, of submissions of compliance certifications (must be at least annually);

2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

3. A requirement that the compliance certification include the following:

a. The identification of each term or condition of the permit that is the basis of the certification;

b. The compliance status;

c. Whether compliance was continuous or intermittent;

d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(c) of this section; and

e. Other facts as the cabinet may require to determine the compliance status of the source;

4. A requirement that all compliance certifications be submitted to the U.S. EPA as well as to the cabinet; and

5. Additional requirements for monitoring and compliance certification, if specified by the cabinet.

(f) A specific condition that the source shall not be allowed to commence operation until it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 5(4) of this administrative regulation, or the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet the applicable review requirements in Sections 7 through 9 of this administrative regulation.

(g) Other provisions required by the cabinet.

(4) General permits.

(a) The cabinet may, after notice and opportunity for public participation provided in Section 7 of this administrative regulation, issue a general permit covering numerous similar sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the cabinet shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in subsection (6) of this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the acid rain program.

(b) Sources that qualify for a general permit shall apply to the cabinet for coverage under the terms of the general permit or shall apply for a permit pursuant to Section 3 of this administrative regulation. The general permit application shall meet the requirements of this administrative regulation and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The cabinet may grant a source's request for a general permit without repeating the public participation procedures required in Section 7 of this administrative regulation. If the cabinet determines that the source does not meet the criteria for a general permit, the cabinet's denial of the general permit shall not constitute a final action and the permit application shall be processed pursuant to the requirements of Section 3 of this administrative regulation.

(5) Temporary sources. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one (1) change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include the following:

(a) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(b) Requirements that the owner or operator notify the cabinet at least ten (10) days in advance of each change in location; and

(c) Conditions that assure compliance with all other provisions of this administrative regulation.

(6) Permit shield.

(a) Except as provided in this administrative regulation, compliance with the conditions of the permit shall be deemed compliance with the applicable requirements as of the date of permit issuance, if:

1. The applicable requirements are included and are specifically identified in the permit; or

2. The cabinet, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(c) Nothing in this subsection or in a permit shall alter or affect the following:

1. 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;

2. The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;

3. The applicable requirements of the acid rain program; or

4. The ability of the U.S. EPA to obtain information from a source pursuant to 42 USC 7414 (Section 114 of the Act).

(7) Emergency provision.

(a) Effect of an emergency. An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the conditions in paragraph (b) of this subsection are met.

(b) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An emergency occurred and the permittee can identify the cause of the emergency;

2. The permitted facility was at the time being properly operated;

3. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

4. The permittee notified the cabinet as promptly as possible and submitted written notice of the emergency to the cabinet within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of subsection (1)(c)3b of this section, and shall contain a description of the emergency, steps taken to mitigate emissions, and corrective actions taken.

(c) In an enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.

(d) This provision is in addition to any emergency or upset provision contained in an applicable requirement.

Section 5. Permit Issuance and Renewal. [~~(1)~~] A person shall not construct, reconstruct, alter, modify, or operate a source without a permit issued pursuant to this administrative regulation. A permit application submitted by an existing source which is deemed complete prior to November 29, 1993, [~~the effective date of this administrative regulation~~] may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete.

(1) Processing applications from existing sources for permits covering the entire source.

(a) An existing major source proposing to accept permit limitations to become a synthetic minor or conditional major source. Applications received from sources submitted pursuant to Section 3(1)(a)1a of this administrative regulation shall be processed as follows:

1. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete pursuant to Section 3(1)(b) of this administrative regulation. The cabinet shall submit the draft permit to the U.S. EPA and provide notice of the draft permit:

a. For public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70; or

b. For public review pursuant to Section 7 if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

2. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public and affected state review requirements in Sections 7 and 8 of this administrative regulation is complete.

3. If a proposed permit is issued:

a. The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

b. The proposed permit shall be the final permit, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

3. Final permit. The cabinet shall issue or deny a final permit within nine (9) months after the application is deemed complete.

4. The source shall operate in compliance with the existing permit or an order of the cabinet until the final permit is issued or denied.

(b) All other existing sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. Applications received from existing sources pursuant to Section 3(1)(a)1b and 2 of this administrative regulation shall be processed as follows:

1. Draft permit. The cabinet shall issue or deny a draft permit:

a. For one-fifth (1/5) of the initial round of applications from existing major sources each year for five (5) years after the classification date.

b. Within sixty (60) days after the application is deemed complete for minor sources, permit renewals, and for sources that become subject to a requirement to obtain a federally enforceable permit after the classification date.

2. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

3. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

4. Final permit. The cabinet shall issue or deny a final permit:

a. For one-fifth (1/5) of the initial round of applications from existing major sources each year for five (5) years after the classification date.

b. Within eighteen (18) months after the application is deemed complete, for minor sources and for sources becoming subject to a requirement to obtain a federally enforceable permit after the classification date.

c. Within six (6) months after receiving a complete application, for permit renewals.

5. The source shall operate in compliance with the existing permit or an order of the cabinet until the final permit is issued or denied.

(c) Existing minor sources required to obtain a state origin permit. Applications received from sources submitted pursuant to Section 3(1)(a)3 shall be processed as follows:

1. The cabinet shall issue or deny a final permit within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

2. The source shall operate in compliance with the existing permit or order of the cabinet until a final permit is issued or denied.

(2) Processing applications from existing sources proposing to construct, reconstruct, alter, or modify an affected facility at the source, submitted pursuant to Section 3(1)(a)4 of this administrative regulation.

(a) Proposed changes that are subject to new source review for major sources or prevention of significant deterioration requirements.

1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 prior to the date the source is required to submit an application for a federally enforceable permit for the entire source shall be processed as follows:

a. Preliminary determination. The cabinet shall make a preliminary determination within sixty (60) days after the application is deemed complete if the change should be approved, approved with conditions or disapproved. The cabinet shall submit the preliminary determination to the U.S. EPA and shall provide notice for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

b. Final determination. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA, public, and affected state review is completed. The cabinet shall notify the applicant in writing of the final determination. If a permit is issued, the cabinet shall make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

c. The source shall construct and operate in compliance with the permit issued in subparagraph 1b of this paragraph until a final permit for the entire source is issued or denied, except that the owner or operator shall not construct a change that is subject to 40 CFR 51.166 and 401 KAR 51:017 until thirty (30) days after receiving notice of the final determination.

d. The permit issued pursuant to subparagraph 1b of this paragraph shall be incorporated into the final permit for the entire source as an administrative amendment.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 after the source is required to submit an application for a federally enforceable permit for the entire source shall be processed as follows:

a. The cabinet shall continue to process the application for the entire source independently from the application for the proposed change.

b. The application for the proposed change shall be processed pursuant subparagraph 1 of this paragraph.

(b) Sources proposing changes that are not subject to new source review for major sources or prevention of significant deterioration requirements.

1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility prior to the date the source is required to submit an application for a permit covering the entire source shall be processed as follows:

a. The cabinet shall issue or deny a state origin permit within sixty (60) days after the application is deemed complete.

b. The source shall construct and operate in compliance with the permit issued pursuant to this subparagraph until a permit for the entire source is issued or denied.

c. A permit issued pursuant to this subparagraph shall be incorporated into the sources's application for a federally enforceable permit for the entire source.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility after the source is required to submit an application for a permit covering the entire source shall be processed as follows:

a. The cabinet shall continue to process the application for the entire source independent of the application for the proposed change.

b. Draft permit. The cabinet shall issue or deny a draft permit for the proposed change within sixty (60) days after the application for the change is deemed complete. The source shall construct in compliance with the draft permit.

c. The cabinet shall process a draft permit issued pursuant to subparagraph 2b of this paragraph and revise the permit for the entire source pursuant to the applicable provisions of Section 6 of this administrative regulation.

(3) Processing applications for the proposed construction of new sources, reconstruction of existing sources, and alteration or modification of sources with a permit for the entire source. Applications received after November 29, 1993, pursuant to Section 3(1)(a)5 of this administrative regulation shall be processed as follows:

(a)1. Constructing or reconstructing sources that are subject to new source review for major sources or prevention of significant deterioration requirements or who propose to accept permit limitations which cause the source to be a synthetic minor source. Applications

received for the proposed construction or reconstruction of a source that is subject to, or would otherwise be subject to, 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 source shall be processed as follows:

a. Preliminary determination/draft permit. The cabinet shall make a preliminary determination if the source should be approved, approved with conditions or disapproved, and issue or deny a draft permit within sixty (60) days after the application is deemed complete.

b. Public and affected state review. The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice for public review pursuant to Section 7 of this administrative regulation. The cabinet shall also provide the draft permit for affected state review pursuant to Section 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

c. Final determination/proposed permit. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA and public review is completed. The cabinet shall notify the applicant in writing of the final determination, issue or deny a proposed permit, and make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

d. If the source is a not required to obtain a permit pursuant to 40 CFR Part 70, the source shall construct and operate in compliance with the proposed permit. The proposed permit shall not be submitted to the U.S. EPA and shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The source shall construct and operate in compliance with the proposed permit until a final permit for the entire source is issued or denied, except that the owner or operator of a source that is subject to 40 CFR 51.166 and 401 KAR 51:017 shall not construct until thirty (30) days after receiving notice of the final determination.

(ii) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation; and

(iii) The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

2. Applications received for the proposed construction or reconstruction of all other sources required to have a permit pursuant to 40 CFR Part 70 or who propose to accept permit limitations which cause the source to be a conditional major source, shall be processed as follows:

a. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete. The source shall construct and operate in compliance with the draft permit until a final permit is issued or denied.

b. Public and affected state review.

(i) The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

(ii) The cabinet shall provide notice of the draft permit for public review pursuant to Section 7 of this administrative regulation, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

d. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public and affected state review required in Sections 7 and 8 of this administrative regulation is completed.

e. If the source is not required to have a permit pursuant to 40 CFR Part 70, the proposed permit shall not be submitted to the U.S. EPA and the proposed permit shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(ii) Final permit. The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

3. Processing applications for the proposed construction, reconstruction, alteration, or modification of sources required to have a state origin permit. The cabinet shall issue or deny a final permit or permit revision within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

(b) Applications for the proposed construction, reconstruction, alteration, or modification at a source after a permit for the entire source has been issued. The cabinet shall follow the applicable preconstruction review procedures of paragraph (a) of this subsection and the applicable permit revision procedures in Section 6 of this administrative regulation for sources who have been issued a permit for the entire source.

~~[(2) Federally enforceable permits. The cabinet shall use the procedures provided in this subsection to issue a permit if the source is a major source, a minor source subject to a federally enforceable requirement and required by the U.S. EPA to obtain a federally enforceable permit, or a minor source that is subject to a federally enforceable requirement and requests that the cabinet issue a federally enforceable permit.~~

~~(a) Draft permit.~~

~~1. The cabinet shall deny the permit or issue a draft permit within sixty (60) days after the application is deemed complete. A minor source shall construct and operate in compliance with the draft permit until a final permit is issued or denied, except as provided in paragraph (c)4 of this subsection.~~

~~2. Public and affected state review. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.~~

~~(b) Proposed permit.~~

~~1. The cabinet shall deny the permit or issue a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. A major source shall construct and operate in compliance with the proposed permit until the final permit is issued, except as provided in paragraphs (c)2 and 3 of this subsection.~~

~~2. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.~~

~~(c) Final permit.~~

~~1. The cabinet shall issue or deny a final permit within eighteen (18) months after receiving a complete application, except as provided in paragraphs 2 and 3 of this subsection.~~

~~2. A source subject to 401 KAR 51:017 shall construct and operate in compliance with a final permit, except as provided in subparagraph 3 of this paragraph. The cabinet shall issue or deny a final permit for these sources within twelve (12) months after receiving a complete application.~~

~~3. An existing source, including a source subject to 401 KAR 51:017, submitting an application pursuant to Section 3(1)(a)1 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet until the final permit is issued or denied. The cabinet shall make a final determination on at least one third (1/3) of these applications during each twelve (12) month period beginning twelve (12) months after the approval date of the state's permit program by the U.S. EPA, so that a final action shall be taken on all applications within thirty six (36) months after program approval.~~

~~4. An existing source submitting an application pursuant to Section 3(1)(a)2 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet, until the final permit is issued or denied.~~

~~(d) The cabinet may extend the time periods specified in paragraphs (a) and (b) of this subsection with the consent of the applicant, however the time periods specified in paragraph (c) of this subsection shall not be exceeded.~~

~~(3) State origin permits. If the source is not subject to a federally enforceable requirement or the source is a minor source not required by the U.S. EPA to have a federally enforceable permit, the cabinet~~

~~shall use the procedures provided in this subsection to issue a permit.~~

~~(a) The cabinet shall deny or issue a final permit within sixty (60) days after receiving a complete application. The cabinet may extend this time period with the consent of the applicant.~~

~~(b) An existing source submitting an application pursuant to Section 3(1)(a)3 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet until a final permit is issued or denied.~~]

(4) Compliance demonstration. A source that is constructing, reconstructing, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055, except as provided in Section 6 of this administrative regulation.

(a) A source which is operating to demonstrate compliance shall not be considered to have commenced operation.

(b) If the source does not successfully demonstrate compliance, the permit shall be amended as necessary and the compliance schedule shall be revised or added, as appropriate, pursuant to Section 4(3)(f) of this administrative regulation.

(5) If an existing source submits a timely and complete application for a permit or permit revision, pursuant to Section 3 of this administrative regulation, the source's failure to have a permit or permit revision shall not be a violation of this administrative regulation until the cabinet makes a final determination to approve or deny the permit or permit revision. The sources authority to operate shall cease to apply if, subsequent to the completeness determination made pursuant to Section 3(1)(b) of this administrative regulation, the applicant fails to submit by the deadline, specified in writing by the cabinet, additional information requested pursuant to Section 3(1)(b)3 of this administrative regulation.

(6) General requirements. For a source that is constructing, reconstructing, altering, or modifying, a permit shall become invalid if construction is not commenced within eighteen (18) months after the permit is issued, if construction begins but is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the scheduled completion date. The cabinet may extend these time periods upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. For a phased construction project, each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(7) Permit duration and renewal.

(a) Permit duration. A permit issued after the effective date of this administrative regulation shall remain in effect for a fixed term of five (5) years, except that permits for solid waste incineration units that combust municipal waste shall remain in effect for a period of twelve (12) years and shall be reviewed by the cabinet at least every five (5) years.

(b) Permit renewal.

1. Permit expiration shall terminate the source's right to operate unless a timely and complete renewal application has been submitted pursuant to Section 3(1)(a)6 of this administrative regulation.

2. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and for affected state and U.S. EPA review, that apply to initial permit issuance.

3. If a timely and complete application for a permit renewal is submitted pursuant to [~~consistent with~~] Section 3 of this administrative regulation, but the cabinet fails to issue or deny the renewal permit before the end of the term of the previous permit, all the terms and conditions of that permit, including any permit shield that is issued pursuant to Section 4(6) of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.

4. If the cabinet fails to act promptly on a federally enforceable permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 6. Permit Revisions and Reopenings. (1) Administrative permit amendment procedures. An administrative permit amendment may be made by the cabinet pursuant to the following:

(a) The cabinet shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on the request, and may incorporate the changes without providing notice to the public or affected states if it determines the permit revision has been made pursuant to this paragraph.

(b) For federally enforceable permits the cabinet shall submit a copy of the revised permit to the U.S. EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) The cabinet may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for the administrative permit amendment as defined in Section 1(3) of this administrative regulation, if the amendment meets the relevant requirements of Sections 4 through 9 of this administrative regulation for significant permit revisions.

(e) Administrative permit amendments for the acid rain portion of the permit shall be governed by regulations promulgated pursuant to 42 USC 7651 through 7651q (Title IV of the Act).

(2) Permit revisions. Except as provided in the acid rain program, the procedures for revising a permit shall be as follows:

(a) Minor permit revision procedures.

1. Minor permit revision procedures shall be used for permit revisions that:

a. Do not violate an applicable requirement;

b. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

c. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

d. Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement but which the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. These terms and conditions include:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification in a provision of 42 USC 7401 through 7514a (Title I of the Act);and

(ii) An alternative emissions limit approved pursuant to 42 USC 7412(i)(5) (Section 112(i)(5) of the Act);

e. Are not modifications in a provision of 42 USC 7401 through 7514a (Title I of the Act) or of an administrative regulation promulgated in 401 KAR Chapters 50 through 63; and

f. Are not required to be processed as a significant permit revision.

2. Notwithstanding this paragraph and paragraph (b)1 of this subsection, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that these minor permit revision procedures are explicitly provided for in the SIP or in applicable requirements.

3. Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs;

b. The source's suggested draft permit;

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of minor permit revision procedures and a request that these procedures be used; and

d. For federally enforceable permits completed forms for the

cabinet to use to notify affected states and the U.S. EPA, as required in Sections 8 and 9 of this administrative regulation.

4. U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete application for a federally enforceable permit revision [~~application~~], the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 8 and 9(2) of this administrative regulation, of the requested minor permit revision.

5. Timetable for issuance.

a. The cabinet shall not issue a final minor permit revision to a federally enforceable permit until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:

(i) [~~a.~~] Issue the minor permit revision as proposed;

(ii) [~~b.~~] Deny the minor permit revision application;

(iii) [~~c.~~] Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures; or

(iv) [~~d.~~] Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this administrative regulation.

b. For state-origin permits, the cabinet shall, within ninety (90) days of receipt of an application for a minor permit revision:

(i) Issue the minor permit revision as proposed;

(ii) Deny the minor permit revision application; or

(iii) Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures.

6. The source's ability to make a change. The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change, and until the cabinet takes any of the actions specified in subparagraph 5a through c of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

(b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

1. Criteria. Group processing shall be used only for permit revisions that:

a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and

b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(22) [~~(20)~~] of this administrative regulation, or five (5) tons per year, whichever is least.

2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.

b. The source's suggested draft permit revision.

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.

d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1b of this paragraph.

e. Certification, for federally enforceable permits, pursuant to Section 3(4) of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.

f. For federally enforceable permits, completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.

3. U.S. EPA and affected state notification for federally enforceable permit revisions. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1b of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 8 and 9(2) of this administrative regulation.

4. Timetable for issuance for federally enforceable permits. Subsection (2)(a)5 of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection (2)(a)5a through d of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45)-day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.

5.The source's ability to make a change. Subsection (2)(a)6 of this section shall apply to permit revisions eligible for group processing.

6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.

(c) Significant permit revision procedures. These procedures shall become effective after the classification date for sources that have permits issued pursuant to this administrative regulation, and shall apply to state-origin permits only if the revision causes the source to be required to have a federally enforceable permit. Revisions that do not cause the source to have a federally enforceable permit shall be processed as minor permit revisions pursuant to paragraphs (a) and (b) of this subsection.

1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or recordkeeping permit terms or conditions, shall normally be considered significant changes. The permittee may, however, make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.

2. Significant permit revisions shall meet all the requirements of this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.

(d) A permit revision shall not be required for a change at a permitted source if the change is neither addressed nor prohibited by the permit, unless the change would result in a change in method of operation or a change in emissions. A change may also be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes

described in this paragraph if:

1. The changes are not modifications pursuant to any provision of 42 USC 7401-7515 (Title I of the Act) or subject to 42 USC 7651 through 7651o (Title IV of the Act);

2. The changes do not result in emissions which exceed the emissions allowable under the permit, whether expressed as a rate of emissions or in terms of total emissions;

3. For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include the following:

a. A brief description of the change within the permitted facility;

b. The date on which the change will occur;

c. Any change in emissions; and

d. Any permit term or condition that is no longer applicable as a result of the change.

4. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph.

5. The change shall be incorporated into the permit at renewal.

(3) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under the following circumstances:

1. Additional applicable requirements become applicable to a source with a remaining permit term of three (3) or more years. A reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. A reopening shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to Section 5(7)(b)3 of this administrative regulation.

2. Additional applicable requirements, including excess emissions requirements, become applicable to an affected source in the acid rain program. Upon approval by the U.S. EPA and the cabinet, excess emissions offset plans shall be incorporated into the permit;

3. The cabinet or the U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

4. For federally enforceable permits, the cabinet or the U.S. EPA determines that the permit shall be revised or revoked to assure compliance with the applicable requirements or, for state-origin permits, the cabinet makes a similar determination.

(b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.

(c) Reopenings in paragraph (a) of this subsection shall not be initiated before a notice of intent to reopen is provided to the source by the cabinet at least thirty (30) days in advance of the date that the permit is to be reopened, except that the cabinet may provide a shorter time period in the case of an emergency.

(4) Reopenings for cause by the U.S. EPA.

(a) If the U.S. EPA finds that cause exists to terminate, modify, or revoke and reissue a federally enforceable permit pursuant to subsection (3) of this section, the U.S. EPA shall notify the cabinet and the permittee of this finding in writing.

(b) The cabinet shall, within ninety (90) days after receipt of notification, forward to the U.S. EPA a proposed determination of termination, revision, or revocation and reissuance of the permit, as appropriate. The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it finds that a new or revised permit application is necessary or that the cabinet has required the permittee to submit additional information.

(c) The U.S. EPA shall review the proposed determination from the cabinet within ninety (90) days of receipt.

(d) The cabinet shall have ninety (90) days from receipt of an objection by the U.S. EPA to resolve the objection and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

(e) If the cabinet fails to submit a proposed determination pursuant to paragraph (b) of this subsection or fails to resolve an objection pursuant to paragraph (d) of this subsection, the U.S. EPA shall terminate, modify, or revoke and reissue the permit after the permittee is notified of the reasons for the action, in writing. The permittee shall be given thirty (30) days from the date of the notice to comment on the U.S. EPA's proposed action and to request a hearing. This notice may be given during the procedures in paragraphs (a) through (d) of this subsection.

Section 7. Procedures for Public Participation. These procedures shall apply only to federally enforceable permits and to state-origin permits that become federally enforceable as a result of the permit action to be taken.

(1) The cabinet shall provide public notice of the opportunity to comment for the following permit actions:

(a) Issuance of a draft permit;

(b) Intended denial of a permit application;

(c) Issuance of a draft significant permit revision;

(d) Issuance of a draft general permit;

(e) Issuance of a permit renewal;

(f) Scheduling of a public hearing pursuant to subsection (7) of this section.

(2) The cabinet shall provide public notice by prominent advertisement in the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

(3) A copy of the notice required in subsection (2) of this section shall be sent to the following persons:

(a) The applicant;

(b) For sources subject to 401 KAR 51:017, officials and agencies having authority over the locations where the source will be located, as follows:

1. The administrator of the U.S. EPA through the appropriate regional office;

2. Local air pollution control agencies;

3. The chief executive of the city and county;

4. Any comprehensive regional land use planning agency; and

5. Any federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source;

(c) Affected states; and

(d) Persons on a mailing list which is maintained and compiled by the cabinet. This mailing list shall include persons requesting to be on the list, and persons solicited from participants in past permit proceedings in the affected area. The cabinet may notify the public of the opportunity to be on the list through periodic publication in the public press and in such publications as state-founded newsletters, environmental bulletins, or state law journals. The cabinet may delete from the list persons who fail to respond to an inquiry of continued interest in receiving notice.

(4) Public notice and the notice for those on the mailing list shall include the following minimum information:

(a) Name and address of the Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Division for Air Quality;

(b) Name and address of the permit applicant and, if different, the name and address of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity involved in the permit action;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, such as:

1. Copies of the draft permit;

2. The application and relevant supporting material, including permit applications, compliance plans, permits, and monitoring and compliance certification reports, except for confidential information; and

3. All other materials available to the cabinet that are relevant to the permit decision;

(e) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of hearings scheduled for the permit; and

(f) A description of the emission change involved in any permit revision, and for sources subject to 401 KAR 51:017, the degree of increment consumption that is expected from the source or modification, if applicable.

(5) The cabinet shall make available for public inspection, in at least one (1) location in each region in which the source is located or would be constructed, reconstructed, or modified, all nonproprietary information contained in the permit application, draft permit, and supporting materials. Public inspection of materials for temporary sources or general permits may be located at the discretion of the cabinet.

(6) Public comment.

(a) Except for permit revisions qualifying for administrative permit amendments and minor permit revision procedures, the cabinet shall provide a minimum of thirty (30) days for public comment on all permit proceedings, including initial permit issuance, draft permits, significant permit revisions, and permit renewals. The comment period shall begin on the date of publication of notice in the newspaper.

(b) The cabinet shall provide notice and opportunity for participation by affected states pursuant to Section 8 of this administrative regulation.

(c) A proposed permit shall not be issued until the public comment period has ended and the cabinet has prepared a response to the comments received. Public comments submitted in writing during the public comment period shall be considered by the cabinet in its decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. Comments may be submitted in alternate format to accommodate individuals with disabilities.

(7) Public hearings.

(a) The cabinet shall provide a public hearing if, on the basis of written requests received within the public comment period, the cabinet determines that material issues have been raised concerning the terms and conditions of a permit. A request shall not require the extension of the comment period associated with the notice.

(b) The cabinet may also elect to hold a public hearing if the cabinet determines that the permit action is of significant public interest. In these cases, public notice of the hearing may be combined with the public notice of the draft permit.

(c) The cabinet shall give notice of a public hearing at least thirty (30) days in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing shall contain the following information:

1. Reference to the dates of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of applicable rules and procedures for the hearing.

(d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts are also available, upon request, in large type or in braille.

(8) Public record. The cabinet shall keep a record of the commentors and of the issues raised during the public participation process. These records shall be made available to the public and to the U.S. EPA.

(9) Petition for EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 9(3)(f) of this administrative regulation.

(10) The following actions shall be exempt from this section:

(a) Permit revisions qualifying for minor permit revision procedures, including group processing;

(b) Administrative permit amendments; and

(c) Fast track permit revisions pursuant to the acid rain program.

Section 8. Notice to Affected States. The provisions of this section shall apply only to federally enforceable permits, and to state-origin permits that will become federally enforceable as a result of the action to be taken.

(1) The cabinet shall give notice of draft permits to affected states on or before the time that the cabinet provides the draft permit or draft permit revision notice to the public pursuant to Section 7 of this administrative regulation, unless Section 6(2)(a) or (b) requires the timing of the notice to be different.

(2) Cabinet response. The cabinet, as part of the submittal of the proposed permit to the U.S. EPA (or for a minor permit revision, as soon as possible after the submittal), pursuant to Section 9 of this administrative regulation, shall notify the U.S. EPA and affected states in writing of refusal by the cabinet to accept a recommendation for the proposed permit that an affected state submitted during the public review period. The notice shall include the cabinet's reasons for not accepting the recommendation.

(3) The cabinet is not required to accept recommendations based on requirements that are not applicable to the proposed permit, or that are not based on requirements of this administrative regulation.

Section 9. U.S. EPA Review. (1) Prohibition on default issuance of permits.

(a) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal until the affected states and the U.S. EPA have had an opportunity to review the proposed permit action pursuant to this section and Section 8 of this administrative regulation; and

(b) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal if it has failed to take action on the application pursuant to subsection (3) of this section, unless the U.S. EPA has waived the review for the U.S. EPA and affected states.

(2) Transmission of information to the U.S. EPA.

(a) The cabinet shall provide to the U.S. EPA a copy of each federally enforceable permit application, permit revision application, proposed permit, and final permit. Information that is submitted with a claim of confidentiality shall be submitted pursuant to Section 3(1)(c) of this administrative regulation.

(b) On a case-by-case basis, and with U.S. EPA approval, the cabinet may submit, for a federally enforceable permit, a permit application summary form and a relevant portion of the permit application and compliance plan in place of the complete application and compliance plan. If possible, this information shall be provided in

computer-readable format compatible with the U.S. EPA's national database management system.

(3) U.S. EPA objection.

(a) The U.S. EPA will object to the issuance of any proposed permit determined by the U.S. EPA not to meet applicable requirements. The U.S. EPA shall file an objection in writing within forty-five (45) days of receipt of the proposed permit and the necessary supporting information.

(b) The cabinet shall not issue a federally-enforceable permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.

(c) The U.S. EPA objection shall include a statement of the reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The U.S. EPA shall provide the permit applicant a copy of the objection.

(d) If the cabinet fails, within ninety (90) days after the date of a U.S. EPA objection, to revise and submit a proposed permit in response to the objection, the U.S. EPA shall issue or deny the permit pursuant to the requirements of 42 USC 7661 through 7661f, (Title V of the Act).

(e) If the U.S. EPA does not object, in writing, pursuant to this section, a person may petition the U.S. EPA within sixty (60) days after the expiration of the U.S. EPA's forty-five (45) day review period to make an objection. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period pursuant to Section 7 of this administrative regulation, unless the petitioner demonstrates that it was impracticable to raise the objections within the comment period, or unless the grounds for the objection arose after the comment period. If the U.S. EPA objects to the proposed permit as a result of a petition filed pursuant to this subsection, the cabinet shall not issue the permit until the U.S. EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to a U.S. EPA objection.

(f) If the cabinet has issued a permit prior to receipt of a U.S. EPA objection pursuant to this section, the U.S. EPA may modify, terminate, or revoke the permit pursuant to Sections 4 through 6 of this administrative regulation, and the cabinet shall thereafter issue a revised permit that satisfies the U.S. EPA objection. The source shall not be in violation of the requirement to have submitted a timely and complete application.

(4) Recordkeeping and sharing of information. The cabinet shall keep records of the information required in subsection (2) of this section for at least five (5) years. The cabinet shall submit, upon request from the U.S. EPA and in a form specified by the U.S. EPA, including computer-readable files to the extent practicable, information which may reasonably be required to determine if the permitting program complies with the requirements of 42 USC 7401 through 7661q, or 40 CFR Part 70. If the information has been submitted to the cabinet under a claim of confidentiality, the cabinet may require the source to submit this information to the U.S. EPA directly. If the cabinet is authorized by a source to submit information to the U.S. EPA under a claim of confidentiality, the cabinet shall submit the confidentiality claim to the U.S. EPA together with the information to which it applies.

Section 10. Emissions Statement Certification. The cabinet shall provide annually to each source subject to this administrative regulation a written copy of the KyEIS containing the most recent information appropriate to that source.

(a) Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its subject emissions.

(b) The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information.

(c) Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the subject emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet. [~~For Section 3(1)(a)1 of this administrative regulation, one third (1/3) of the existing major sources with the lowest score shall be calculated using the following formula:~~

~~(1 + n)(1 + p/2) = Score~~

~~Where: "n" shall equal the number of emission units at the source as contained in the most recent version of the Kentucky Emissions Inventory System (KyEIS); and~~

~~"p" shall equal the sum of the number of pollutants, for which there is a national ambient air quality standard, emitted at each emission unit.~~]

Section 11. Materials Incorporated by Reference. (1) The following documents relating to affected sources subject to the acid rain program, are hereby incorporated by reference:

(a) 40 CFR Part 72, Permits Regulation, as published in the Federal Register, January 11, 1993 (58 FR 3650-3687).

(b) 40 CFR Part 73, Allowance System, as published in the Federal Register, January 11, 1993 (58 FR 3687-3701).

(c) 40 CFR Part 75, Continuous Emission Monitoring, as published in the Federal Register, January 11, 1993 (58 FR 3701-3757).

(d) 40 CFR Part 77, Excess Emissions, as published in the Federal Register, January 11, 1993 (58 FR 3757-3760).

(e) 40 CFR Part 78, Appeal Procedures for acid rain program, as published in the Federal Register, January 11, 1993 (58 FR 3760-3766).

(2) Copies of the documents incorporated by reference in subsection (1) of this section shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices of the Division for Air Quality:

(a) Division for Air Quality, 803 Schenkel Lane, [~~316 St. Clair Mall,~~] Frankfort, Kentucky, 40601, (502) 573 [~~564~~]-3382;

(b) Ashland Regional Office, P.O. Box 1507, 3700 Thirteenth [~~13th~~] Street, Ashland, Kentucky, 41105-1507, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, [~~311 West Second Street,~~] Owensboro, Kentucky, 42303, [~~42301~~], (502) 686-3304;

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed amendment will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals

with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: The proposed amendments to this administrative regulation revise the previous regulation of the same number promulgated on November 29, 1993 and submitted to the U.S. EPA as part of Kentucky's proposed Title V Operating Permit Program. The Regulatory Impact Analysis for that regulation contains a detailed explanation of how the state air permitting program is being revised to meet the Title V requirements of the Clean Air Act amendments, and how this administrative regulation plays a majority role in that task. The principal reasons for these proposed amendments are to:

1. Enable the Division to issue and revise permits for major sources between November 29, 1993 and such time as the sources are required to apply for a Title V permit without having to follow the public participation procedures required under Title V;

2. Add provisions for issuing source-specific Maximum Available Control Technology standards as required by the Clean Air Act amendments;

3. Add provisions for permitting synthetic minors and conditional majors via the State Implementation Plan instead of Title V;

4. Add the requirement to certify annual emissions reports; and

5. Clarify the provisions for issuing and renewing permits contained in Section 5. This administrative regulation contains the permitting requirements for all air pollution sources in Kentucky. There are currently over 2500 sources listed in the Kentucky Emissions Inventory System (KyEIS).

(a) Direct and indirect costs or savings to those affected: There are no significant costs or savings that will accrue to the regulated community from the amendments contained in this administrative regulation.

1. First year: There are no significant costs or savings.

2. Continuing costs or savings: There are no significant costs or savings.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): There are no additional cost factors.

(b) Reporting and paperwork requirements: There will be a decrease in reporting and paperwork requirements for some sources as a result of the amendments to this administrative regulation.

(2) Effects on the promulgating administrative body: The principal effect these amendments will have on the Division for Air Quality is to allow the Permit Review Branch to issue and revise permits for existing sources between November 29, 1993 and such time as the source is required to apply for a Title V permit without the added burden of holding public hearings and conducting reviews with affected states and the U.S. EPA, except for those sources which are subject to the New Source Review and Prevention of Significant Deterioration requirements of Title I, and for which such hearings and reviews are already federally mandated.

(a) Direct and indirect costs or savings: There are no significant costs or savings that will accrue to the division as a result of these amendments, except for the time saved in conducting hearings and other reviews that would have been required.

1. First year: There are no significant costs or savings.

2. Continuing costs or savings: There are no significant costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings.

(b) Reporting and paperwork requirements: There will be a decrease in the reporting and paperwork requirements as a result of these amendments.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The provisions of this administrative regulation are mandated by Title V of the Clean Air Act Amendments of 1990, by the State Implementation Plan, and by the U.S. EPA, and these amendments are consistent with the federal mandate.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There is no known conflict with other statutes, rules, regulations or policies.

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no known conflict.

(6) Any additional information or comments: The cabinet offers no additional comments.

TIERING: Was tiering applied? Yes. Several of the amended provisions in this administrative regulation will benefit smaller sources. Minor sources are not required to list all the applicable requirements on their application; new sources that are major only for toxics will not have to submit their applications until after program approval; and provisions were added for synthetic minor and conditional major sources to help them avoid the major source requirements under Title I and Title V of the Clean Air Act Amendments.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Any facility, such as a waste incinerator, which is owned or operated by a local government and emits a regulated pollutant in amounts greater than the specified de minimis will be required to obtain a permit under this administrative regulation. The proposed amendments do not change this requirement.

3. State the aspect or service of local government to which this administrative regulation relates. As stated in the response to question 2, any service provided by local government which emits a regulated pollutant in amounts greater than the specified de minimis will be affected, and the proposed amendments will not alter this effect.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact on the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments to this administrative regulation revise a previous regulation of the same number promulgated on November 29, 1993, which contained the state operating permit program required by Title V of the 1990 Clean Air Act Amendments. The federal mandate is contained in 42 USC 7401-7671q and 40 CFR Part 70 as published in the Federal Register of July 21, 1992 (57 FR 32250). 42 USC 7661-7661f (Title V of the CAAA) contains the specific requirements for a federally enforceable operating permit program. The final rules establishing the requirements for an approvable state operating permit program are contained in 40 CFR part 70.

2. State compliance standards. The state compliance standards

are contained in KRS Chapter 13A and in the current version of this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. There were no emission standards contained in the 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. To the contrary, these amendments remove some of the requirements contained in the November 29, 1992 version which were found to be more stringent than necessary. For example, pre-construction review will only be required for sources subject to the attainment provisions of Title I, minor sources will not be required to list all applicable requirements on their applications, and new sources that are major for toxic pollutants only will not have to apply for a permit until our program is approved by EPA.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no added standards or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:101. New bulk gasoline plants.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 42 USC 7401-7626, 7407, 7408, 7410 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality. This administrative regulation provides for the control of volatile organic compound emissions from new bulk gasoline plants.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility which commenced on or after the classification defined below which is located:~~

~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~

~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

Section 1. [~~2.~~] Definitions. As used in this administrative regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 59:001 [~~50:010~~].

(1) "Affected facility" means a bulk gasoline plant.

(2) "Bulk gasoline plant" means a facility for the storage and dispensing of gasoline that employs tank trucks, trailers, railroad cars, or other mobile nonmarine vessels for both incoming and outgoing gasoline transfer operations.

(3) "Gasoline" means a [~~any~~] petroleum distillate having a Reid vapor pressure of four (4.0) pounds per square inch or greater used as a fuel for internal combustion engines.

(4) "Bottom-fill system" means a system of filling transport vehicle tanks through an opening that is flush with the bottom of the transport vehicle tank.

(5) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(6) "Submerged fill tube system" means a fill tube the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the transport vehicle tank.

(7) "Classification date" means June 29, 1979.

(8) "Transport vehicle" means tank trucks, trailers, or railroad tank cars.

Section 2. Applicability. (1) This administrative regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this administrative regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this administrative regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this administrative regulation but prior to the effective date of this administrative regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this administrative regulation except that control devices and procedures required by a previous version of this administrative regulation at the time it commenced shall continue to be operated and maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. (1) The owner or operator of an affected facility shall install, maintain, and operate:

(a) Stationary storage tank control devices according to [~~the provisions of~~] 401 KAR 59:050 [~~and/~~]or 401 KAR 61:050.

(b) A vapor balance system or an equivalent control approved by the cabinet and the U.S. EPA for:

1. Filling of stationary storage tanks from transport vehicle tanks; and

2. Filling of transport vehicle tanks from stationary storage tanks.

(c) For loading into transport vehicle tanks either:

1. A submerged fill tube system; or

2. A bottom-fill system.

(2) The vapor balance system shall be equipped with fittings which are vapor tight and [~~will~~] automatically close upon disconnection so as to prevent the release of organic material.

(3) The cross-sectional area of the vapor return hose shall [~~must~~] be at least fifty (50) percent of the cross-sectional area of the liquid fill line and free of flow restrictions.

(4) [~~The vapor balance system must be equipped with interlocking devices which prevent transfer of gasoline until the vapor return hose is connected.~~

~~(5)~~] Transport vehicle tank hatches shall be closed at all times during loading operations.

(5) [~~(6)~~] There shall be no leaks from the pressure/vacuum relief valves and hatch covers of the stationary storage tanks during loading.

(6) [~~(7)~~] The pressure relief valves on storage vessels and tank trucks or trailers shall be set to release at no less than seven- tenths (0.7) psig unless a lower setting is required by applicable fire codes.

(7) [~~(8)~~] The owner or operator shall not load gasoline into a [~~any~~] transport vehicle or receive gasoline from a [~~any~~] transport vehicle which does not have proper fittings for connection of the vapor balance system, nor shall the owner or operator load or receive gasoline unless the vapor balance system is properly connected and in good working order. Except as provided in subsection (8) [~~(9)~~] of this section the fittings on the transport vehicle tanks shall [~~must~~] be vapor tight and automatically close upon disconnection so as to prevent the release of organic material.

(8) [~~(9)~~] The following shall apply to the loading of a transport vehicle tank by means of a submerged fill tube system:

(a) When inserted into the tank, the submerged fill tube system shall [~~must~~] form a vapor tight seal with the tank.

(b) Tank hatches are to be opened only for the minimum time necessary to insert or remove the submerged fill tube system.

(9) [~~(10)~~] No owner or operator shall permit gasoline to be spilled, discarded in sewers, stored in open containers, or handled in a [~~any other~~] manner that would result in evaporation.

(10) [~~(11) On or after December 31, 1982,~~] No owner or operator of a bulk gasoline plant [~~in an urban nonattainment county~~] subject to this administrative regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal, shall allow loading of a tank truck unless the following provisions are met:

(a) The tank truck has a valid Kentucky pressure-vacuum test sticker as required by 401 KAR 63:031 attached and visibly displayed;

(b) The vapor balance system and associated equipment are designed and operated to prevent gauge pressure in the tank truck from exceeding 450 mm water (eighteen (18) in. water) and prevent vacuum from exceeding 150 mm water (six (6) in. water);

(c) A pressure tap or [~~any~~] equivalent system as approved by the cabinet is installed on the vapor balance system so that a liquid manometer[~~, supplied by the cabinet,~~] can be connected by an inspector to the tap in order to determine compliance with paragraph (b) of this subsection. The pressure tap shall be installed by the owner or operator as close as possible to the connection with the delivery tank, and shall consist of a one- quarter (1/4) inch tubing connector which is compatible with the use of three-sixteenths (3/16) inch inside diameter plastic tubing; and

(d) During loading there is no reading greater than or equal to 100 percent of the lower explosive limit (LEL, measured as propane) at a distance of two and five-tenths (2.5) centimeters around the perimeter of a potential leak source associated with the vapor balance system of a bulk gasoline plant as detected by a combustible gas detector using the test procedure referenced in Section 5 of this administrative regulation.

Section 4. The owner or operator may elect to use an alternate control system if it can be demonstrated to the cabinet's satisfaction that the alternate system shall [~~will~~] achieve equivalent control efficiency.

Section 5. Compliance. On or after December 31, 1982, the test procedure as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), which has been incorporated [~~filed~~] by reference in 401 KAR 50:015, or an equivalent procedure approved by the cabinet, shall be used by the cabinet to determine compliance with the standard prescribed in Section 3(10) [~~(11)~~](d) of this administrative regulation during inspections conducted pursuant to KRS 224.10-100(10).

Section 6. Compliance Timetable. (1) Affected facilities which were subject to this administrative regulation as in effect on August 24, 1982, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this administrative regulation, becomes subject to this administrative regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this administrative regulation no later than eight (8) months after the date the affected facility becomes subject to this administrative regulation.

(b) Award a contract for the control system no later than nine (9) months after the date the affected facility becomes subject to this administrative regulation.

(c) Initiate on-site construction or installation of emission control equipment no later than ten (10) months after the date the affected facility becomes subject to this administrative regulation.

(d) On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this administrative regulation.

(e) Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this administrative regulation.

Section 7. Exemptions. An affected facility shall be exempt from this administrative regulation if the throughput is less than 4,000 gal/day. A rolling thirty (30) day average shall be allowed for determining applicability.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: The types of entities affected are new bulk gasoline plants. No entities are affected by this amendment because of requirements by the division's toxic regulations (401 KAR 63:021, Existing sources emitting toxic air pollutants and 401 KAR 63:022, New or modified sources emitting toxic air pollutants). The toxics regulations apply statewide. This administrative regulation is part of Kentucky's State Implementation Plan (SIP) and applies to Volatile Organic Compound (VOC) emissions in certain ozone nonattainment areas. The amendments to this administrative regulation are being made to update the applicability, to exempt small sources, and to comply with KRS Chapter 13. The applicability is being made compatible with the Clean Air Act as amended November 15, 1990. The amendments made to comply with KRS Chapter 13A do not impact any sources. Because of the toxic requirements, no impacts are expected by the VOC applicability change, however, a VOC discussion is presented. According to the division's records, no sources presently in operation are affected by the change in VOC applicability. New sources locating in a county or portion of a county designated nonattainment for ozone for any classification except marginal and new sources which are part of a major source of VOC locating in any county will be subject to this administrative regulation.

(a) Direct and indirect costs or savings to those affected: As noted under (1) above, the potential impacts of this amendment are already required under 401 KAR 63:021 or 401 KAR 63:022. Therefore, no additional costs are associated with this amendment. Cost estimates for 2 model plants with various alternatives are presented in "Control of Volatile Organic Emissions from Bulk Gasoline Plants", EPA-450/2-77-035, December 1977.

1. First year: Please see 1(a) above.

2. Continuing costs or savings: Please see 1(a) above.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): Please see 1(a) above. The effects upon competition that this amendment would create by requiring controls or minor sources in some nonattainment areas for ozone are eliminated by the statewide applicability of 401 KAR 63:021 and 401 KAR 63:022.

(b) Reporting and paperwork requirements: This amendment does not change reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the Clean Air Act as amended November 15, 1990 and the states' major new source VOC strategy.

(5) Identify any statute, rule, regulation or government policy which may be in conflict overlapping, or duplication: This administrative regulation requires Reasonably Available Control Technology (RACT) on VOC emissions. RACT or Best Available Control Technology (BACT) is required on toxic emissions by 401 KAR 63:021 or 401 KAR 63:022. This administrative regulation is part of Kentucky's VOC SIP and, therefore, federally enforceable. The division's toxic regulations 401 KAR 63:021 and 401 KAR 63:022 are not part of the SIP and not federally enforceable.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments:

- Section 112(b) of the Clean Air Act lists benzene (including benzene from gasoline) as a hazardous pollutant. On July 16, 1992, the United States Environmental Protection Agency (USEPA) published a list of source categories and subcategories to be regulated under Section 112 which included gasoline distribution. The division anticipates a federal regulation on bulk plants, but to date this federal regulation has not been proposed.
- Section 3(4) was deleted to remove obsolete language.
- Section 7 was added to be compatible with USEPA guidance on exempting small sources.

TIERING: Was tiering applied? Yes. Section 7 was added to exempt small sources and is compatible with USEPA guidance.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. This amendment changes the applicability, but does not change the standards. The standards are contained in the USEPA document referenced in 3. below.

3. Minimum or uniform standards contained in the federal mandate. This amendment does not change the standards. The standards are contained in the USEPA document "Control of Volatile Organic Emissions from Bulk Gasoline Plants", EPA-450/2-77-035, December 1977.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in attainment counties will become subject to this administrative regulation. For future construction after the effective date of the amendments to this administrative regulation, major sources in all counties will become subject to the requirements of this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this administrative regulation to new major sources in attainment areas.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:056. Existing bulk gasoline plants.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 42 USC 7401-7626, 7407, 7408, 7410 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality. This administrative regulation provides for the control of volatile organic compound emissions from existing bulk gasoline plants.

~~[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility which commenced before the classification date defined below, which is located:~~

~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~

~~(2) In any county which is designated nonattainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]~~

Section 1. [~~2.~~] Definitions. As used in this administrative regulation, all terms not defined in this section [~~herein~~] shall have the

meaning given to them in 401 KAR 61:001 [~~50:010~~].

(1) "Affected facility" means a bulk gasoline plant.

(2) "Bulk gasoline plant" means a facility for the storage and dispensing of gasoline that employs tank trucks, trailers, or other mobile nonmarine vessels for both incoming and outgoing gasoline transfer operations.

(3) "Gasoline" means a [~~any~~] petroleum distillate having a Reid vapor pressure of four (4.0) pounds per square inch or greater used as a fuel for internal combustion engines.

(4) "Bottom-fill system" means a system of filling transport vehicle tanks through an opening that is flush with the bottom of the transport vehicle tank.

(5) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(6) "Submerged fill tube system" means a fill tube the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the transport vehicle tank.

(7) "Classification date" means June 29, 1979.

(8) "Transport vehicle" means tank trucks, trailers, railroad or tank cars.

Section 2. Applicability. This administrative regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this administrative regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. (1) The owner or operator of an affected facility shall install, maintain, and operate:

(a) Stationary storage tank control devices according to [~~the provisions of~~] 401 KAR 59:050 [~~and/~~]or 401 KAR 61:050.

(b) A vapor balance system or an equivalent control approved by the cabinet and the U.S. EPA for:

1. Filling of stationary storage tanks from transport vehicle tanks; and

2. Filling of transport vehicle tanks from stationary storage tanks.

(c) For loading into transport vehicle tanks either:

1. A submerged fill tube system; or

2. A bottom-fill system.

(2) The vapor balance system shall be equipped with fittings which are vapor tight and [~~will~~] automatically close upon disconnection so as to prevent the release of organic material.

(3) The cross-sectional area of the vapor return hose shall [~~must~~] be at least fifty (50) percent of the cross-sectional area of the liquid fill line and free of flow restrictions.

(4) [~~The vapor balance system must be equipped with interlocking devices which prevent transfer of gasoline until the vapor return hose is connected.~~

~~(5)~~] Transport vehicle tank hatches shall be closed at all times during loading operations.

(5) [~~(6)~~] There shall be no leaks from the pressure-vacuum relief valves and hatch covers of the stationary storage tanks during loading.

(6) [~~(7)~~] The pressure relief valves on storage vessels and tank trucks or trailers shall be set to release at no less than seven-tenths (0.7) psig unless a lower setting is required by applicable fire codes.

(7) [~~(8)~~] The owner or operator shall not load gasoline into any transport vehicle or receive gasoline from any transport vehicle which does not have proper fittings for connection of the vapor balance system, nor shall the owner or operator load or receive gasoline unless the vapor balance system is properly connected and in good working order. Except as provided in subsection (8) [~~(9)~~] of this section the fittings on the transport vehicle tanks shall [~~must~~] be vapor tight and automatically close upon disconnection so as to prevent the release of organic material.

(8) [~~(9)~~] The following shall apply to the loading of a transport vehicle tank by means of a submerged fill tube system:

(a) When inserted into the tank, the submerged fill tube system shall [~~must~~] form a vapor tight seal with the tank.

(b) Tank hatches are to be opened only for the minimum time necessary to insert or remove the submerged fill tube system.

(9) [~~(10)~~] No owner or operator shall permit gasoline to be spilled, discarded in sewers, stored in open containers, or handled in a [~~any other~~] manner that would result in evaporation.

(10) [~~(11)~~] No owner or operator of a bulk gasoline plant [~~in an urban county~~] subject to this administrative regulation shall allow loading of a tank truck unless the following provisions are met:

(a) The tank truck has a valid Kentucky pressure-vacuum test sticker as required by 401 KAR 63:031 attached and visibly displayed;

(b) The vapor balance system and associated equipment are designed and operated to prevent gauge pressure in the tank truck from exceeding 450 mm water (eighteen (18) in. water) and prevent vacuum from exceeding 150 mm water (six (6) in. water);

(c) A pressure tap or [~~any~~] equivalent system as approved by the cabinet is installed on the vapor balance system so that a liquid manometer[~~, supplied by the cabinet,~~] can be connected by an inspector to the tap in order to determine compliance with paragraph (b) of this subsection. The pressure tap shall be installed by the owner or operator as close as possible to the connection with the delivery tank, and shall consist of a one- quarter (1/4) inch tubing connector which is compatible with the use of three-sixteenth (3/16) inch inside diameter plastic tubing; and

(d) During loading operations there is no reading greater than or equal to 100 percent of the lower explosive limit (LEL, measured as propane) at a distance of two and five-tenths (2.5) centimeters around the perimeter of a potential leak source associated with the vapor balance system of a bulk gasoline plant as detected by a combustible gas detector using the test procedure referenced in Section 5 of this administrative regulation.

Section 4. The owner or operator may elect to use an alternate control system if it can be demonstrated to the cabinet's satisfaction that the alternate system shall [~~will~~] achieve equivalent control efficiency.

Section 5. Compliance. The test procedure as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), which has been incorporated [~~filed~~] by reference in 401 KAR 50:015, or an equivalent procedure approved by the cabinet, shall be used by the cabinet to determine compliance with the standard prescribed in Section 3(10) [~~(11)~~](d) of this administrative regulation during inspections conducted pursuant to KRS 224.10-100(10).

Section 6. Compliance Timetable. (1) Affected facilities which were subject to this administrative regulation as in effect on August 24, 1982, shall have achieved final compliance.

(2) The owner or operator of an affected facility that becomes subject to this administrative regulation on or after the effective date of this administrative regulation shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this administrative regulation no later than eight (8) months after the date the affected facility becomes subject to this administrative regulation.

(b) Award the control system contract no later than nine (9) months after the date the affected facility becomes subject to this administrative regulation.

(c) Initiate on-site construction or installation of emission control equipment no later than ten (10) months after the date the affected

facility becomes subject to this administrative regulation.

(d) On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this administrative regulation.

(e) Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this administrative regulation. [~~The owner or operator of an affected facility located in any county designated nonattainment for ozone under 401 KAR 51:010 shall be required to complete the following:~~

~~(a) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1979.~~

~~(b) Award the control system contract no later than January 1, 1980.~~

~~(c) Initiate on-site construction or installation of emission control equipment no later than July 1, 1980.~~

~~(d) On-site construction or installation of emission control equipment shall be completed no later than March 1, 1981.~~

~~(e) Final compliance shall be achieved no later than May 1, 1981.~~

~~(2) The owner or operator of an affected facility located in a county not specified under subsection (1) of this section shall be required to complete the following:~~

~~(a) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1981.~~

~~(b) Award the control system contract no later than January 1, 1982.~~

~~(c) Initiate on-site construction or installation of emission control equipment no later than July 1, 1982.~~

~~(d) On-site construction or installation of emission control equipment shall be completed no later than March 1, 1983.~~

~~(e) Final compliance shall be achieved no later than May 1, 1983.~~

~~(3) The owner or operator of a bulk plant in an urban county subject to this regulation shall achieve final compliance with Section 3(11) of this regulation by December 31, 1982.~~]

Section 7. Exemptions. An affected facility shall be exempt from this administrative regulation if the throughput is less than 4,000 gal/day. A rolling thirty (30) day average shall be allowed for determining eligibility.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: The types of entities affected are bulk gasoline plants. No entities are affected by this amendment because of requirements by the division's toxic regulations (401 KAR 63:021, Existing sources emitting toxic air pollutants and 401 KAR 63:022, New or modified sources emitting toxic air pollutants). The toxics regulations apply statewide. This administrative regulation is part of Kentucky's State Implementation Plan (SIP) and applies to Volatile Organic Compound (VOC) emissions in certain ozone nonattainment areas. The amendments to this administrative regulation are being made to update the applicability, to exempt small sources, and to comply with KRS Chapter 13. The applicability is being made compatible with the Clean Air Act as amended November 15, 1990. The amendments made to comply with KRS Chapter 13A do not impact any sources. Because of the toxic requirements, no impacts are expected by the VOC applicability change, however, a VOC discussion is presented. According to the division's records, the change in VOC applicability potentially affects four (4) sources (1 in Boyd County, 1 in Bullitt county, and 2 in Oldham County).

(a) Direct and indirect costs or savings to those affected: As noted under (1) above, the potential impacts of this amendment are already required under 401 KAR 63:021 or 401 KAR 63:022. Therefore, no additional costs are associated with this amendment. Cost estimates for 2 model plants with various alternatives are presented in "Control of Volatile Organic Emissions from Bulk Gasoline Plants", EPA-450/2-77-035, December 1977.

1. First year: Please see 1(a) above.

2. Continuing costs or savings: Please see 1(a) above.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): Please see 1(a) above. The effects upon competition that this amendment would create by requiring controls in some nonattainment areas for ozone are eliminated by the statewide applicability of 401 KAR 63:021 and 401 KAR 63:022.

(b) Reporting and paperwork requirements: This amendment does not change reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspection and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the Clean Air Act as amended November 15, 1990.

(5) Identify any statute, rule, regulation or government policy which may be in conflict overlapping, or duplication: This administrative regulation requires Reasonably Available Control Technology (RACT) on VOC emissions. RACT or Best Available Control Technology (BACT) is required on toxic emissions by 401 KAR 63:021 or 401 KAR 63:022. This administrative regulation is part of Kentucky's VOC SIP and, therefore, federally enforceable. The division's toxic regulations 401 KAR 63:021 and 401 KAR 63:022 are not part of the SIP and not federally enforceable.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments:

• Section 112(b) of the Clean Air Act lists benzene (including benzene from gasoline) as a hazardous pollutant. On July 16, 1992, the United States Environmental Protection Agency (USEPA) published a list of source categories and subcategories to be

regulated under Section 112 which included gasoline distribution. The Division anticipates a federal regulation on bulk plants, but to date this federal regulation has not been proposed.

• Section 3(4) was deleted to remove obsolete language.

• Section 7 was added to be compatible with USEPA guidance on exempting small sources.

TIERING: Was tiering applied? Yes. Section 7 was added to exempt small sources and is compatible with USEPA guidance.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. This amendment changes the applicability, but does not change the standards. The standards are contained in the USEPA document referenced in 3. below.

3. Minimum or uniform standards contained in the federal mandate. This amendment does not change the standards. The standards are contained in the USEPA document "Control of Volatile Organic Emissions from Bulk Gasoline Plants", EPA-450/2-77-035, December 1977.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amendment is proposed to make the applicability of the regulation the same as the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment does not impose stricter standards, or additional or different responsibilities or requirements.

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 June 14 [~~May 12~~], 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	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 (Amended 6/14/94)
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
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-08-01 Use of Force
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions
27-13-01 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: June 14, 1994
FILED WITH LRC: June 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 25, 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 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind 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 June 14, [~~March 15,~~] 1994 are incorporated by reference and shall be referred to as Kentucky State Penitentiary Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, 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.

KSP 000000-06	Administrative Regulations
KSP 01-02-01	Public Information and Media Communications [~~(Amended 3/15/94) (Renumbered from 010000-04)~~]
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program (Amended 6/14/94)
KSP 02-08-01	Inventory Records and Control
KSP 02-11-01	Requisition and Purchase of Supplies and Equipment
KSP 02-12-01	Inmate Personal Funds
KSP 05-02-01	Management Information System (Amended 6/14/94)
KSP 06-01-01	Inmate Records (Amended 6/14/94)
KSP 070000-20	Menu Preparation and Planning
KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
KSP 090000-01	Inmate Work Programs/Safety Inspections of Inmate Work Locations
KSP 09-08-01	Searches and Preservation of Evidence
KSP 10-02-01	Special Management Units: Assignment, Classification Review and Release
KSP 10-02-05	Special Security Unit
KSP 10-04-01	Special Needs Inmates
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-08	Behavioral Counseling Record
KSP 100000-14	Property Room: Clothing Storage and Inventory
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 11-03-01	Therapeutic Diets
KSP 110000-04	Preparole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee
KSP 110000-12	Unit Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-18	Functions of the Classification Committee
KSP 120000-08	Inmate Furloughs
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-31	Extended Furloughs
KSP 13-01-01	Pharmacy Procedures
KSP 13-02-01	Hospital Services
KSP 13-02-02	Sick Call
KSP 13-02-03	Health Evaluations
KSP 13-02-04	Emergency Medical Procedure
KSP 13-02-05	Consultations
KSP 13-02-08	Medical Records
KSP 13-02-09	Psychiatric and Psychological Services
KSP 13-02-11	Psychological/Psychiatric Treatment Upon Release
KSP 13-02-12	Dental Services for Special Management Units
KSP 13-02-13	Optometric Services
KSP 130000-10	Execution Plan
KSP 14-03-01	Marriage of Inmates
KSP 14-06-01	Inmate Grievance Procedure
KSP 15-01-01	Inmate Grooming and Dress Code
KSP 15-03-01	Award of Meritorious Good Time
KSP 15-06-01	Due Process/Disciplinary Procedures [~~(Amended 3/15/94)~~]
KSP 15-10-01	Discharge of Inmates by Shock Probation

KSP 16-01-01	Visiting Program
KSP 16-02-01	Inmate Correspondence
KSP 16-03-02	Inmate Telephone Access
KSP 16-04-01	Inmate Packages
KSP 17-01-01	Inmate Personal Property
KSP 18-15-01	Protective Custody Unit
KSP 19-05-01	Correctional Industries
KSP 20-04-01	Educational Programs

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 14, 1994
FILED WITH LRC: June 14, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 25, 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 and William Seabold, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 317 employees of the Kentucky State Penitentiary, 819 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised May 23 [~~April 15~~], 1994 are incorporated by reference and shall be referred to as Luther Luckett Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

LLCC 01-12-01	Duty Officer Responsibilities [~~(Amended 4/15/94)~~]
LLCC 01-13-01	Smoking: LLCC Facility
LLCC 02-01-02	Fiscal Management: Accounting Procedures
LLCC 02-01-03	Fiscal Management: Agency Funds
LLCC 02-01-04	Fiscal Management: Insurance
LLCC 02-03-01	Fiscal Management: Audits
LLCC 08-01-01	Offender Records [~~(Amended 4/15/94)~~]
LLCC 08-04-01	Storage of Expunged Records
LLCC 08-05-01	Psychological and Psychiatric Reports
LLCC 11-09-01	Rules and Regulations of the Unit
LLCC 11-13-01	Inmate Dress and Use of Access Areas
LLCC 11-18-02	Use of Monitor Telephone
LLCC 11-19-01	Unit Shakedowns/Control of Excess Property
LLCC 11-20-01	Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01	Special Management Inmates
LLCC 12-01-02	Pretrial Contract Hold Status
LLCC 13-01-01	Dining Room Guidelines
LLCC 13-04-01	Food Service: Meals
LLCC 13-04-02	Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02	Medical Screening of Food Handlers
LLCC 13-06-01	Food Service: Inspections and Sanitation
LLCC 13-07-01	Food Service: Purchasing, Storage and Farm Products
LLCC 13-08-01	OJT Food Service Training Placement
LLCC 14-01-01	Sanitation, Living Condition Standards, and Clothing Issue
LLCC 14-05-01	Institutional Inspections
LLCC 15-01-01	Health Maintenance Services; Sick Call and Pill Call
LLCC 15-03-01	Pharmacy
LLCC 15-03-02	Pharmacy Personnel
LLCC 15-03-03	Distribution, Procurement and Control
LLCC 15-03-04	Inmate - Self Administration of Medication [~~(Amended 4/15/94)~~]
LLCC 15-03-05	Use of Psychotropic Medications
LLCC 15-05-02	Licensure and Training Standards
LLCC 15-06-02	Specialized Health Services
LLCC 15-06-03	Emergency Medical/Dental Care Services
LLCC 15-06-04	First Aid/CPR Training Program
LLCC 15-06-05	Suicide Prevention and Intervention Program
LLCC 15-07-01	Health Records
LLCC 15-08-01	Special Diets
LLCC 15-14-01	Informed Consent
LLCC 15-15-01	Medical Restraints
LLCC 15-16-01	Health Education/Special Health Programs
LLCC 15-17-01	Serious and Infectious Diseases [~~(Amended 4/15/94)~~]
LLCC 16-01-01	Inmate Rights and Responsibilities

LLCC 16-03-01	Inmate Legal Services [~~(Amended 4/15/94)~~]
LLCC 18-01-01	Inmate Correspondence
LLCC 18-02-01	Inmate Visiting
LLCC 18-02-03	Extended Visit and Furloughs
LLCC 18-02-04	Meritorious Visits (Amended 5/23/94)
LLCC 18-03-01	Entry and Identification of Visitors for Inmate Visitation
LLCC 18-03-03	Inmate Visiting Disciplinary Segregation Administrative Segregation
LLCC 18-03-04	Parole Hearings
LLCC 20-01-01	Personal Property Control
LLCC 20-04-01	Inmate Canteen Committee
LLCC 20-04-02	Inmate Canteen
LLCC 20-04-03	Canteen Purchase Limits
LLCC 20-05-01	Inmate Control of Personal Funds
LLCC 20-05-02	Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
LLCC 20-05-03	Theft of Inmate Personal Property
LLCC 20-06-01	Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01	Classification/Security Levels
LLCC 21-03-01	Classification Process
LLCC 23-01-01	Academic School
LLCC 26-01-01	Religious Services [~~(Amended 4/15/94)~~]
LLCC 26-01-02	Prayer
LLCC 28-03-01	Temporary Release/Community Center Release
LLCC 28-04-01	Preparole Progress Report
LLCC 28-04-02	Parole Eligibility Dates

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: May 23, 1994

FILED WITH LRC: May 23, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 25, 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 and William Seabold, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 289 employees of the Luther Luckett Correctional Complex, 1048 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised June 14, [~~April 15,~~] 1994 are incorporated by reference and shall be referred to as Kentucky Correctional Institution for Women 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 on weekdays between 8 a.m. to 4:30 p.m.

KCIW 01-08-01	News Media Access [~~(Amended 4/15/94)~~]
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-04	Institution Purchasing Procedures
KCIW 02-03-01	Inventory Control of Nonexpendable Personal Property
KCIW 02-03-02	Inventory and Control of Stores
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen and Staff Canteen
KCIW 06-01-01	Inmate Records (Amended 6/14/94)
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03	Storage of Expunged Records
KCIW 10-01-01	Special Management Unit General Operation and Regulations
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 10-01-04	Special Security
KCIW 11-01-01	Food Service Operation Inspections
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products
KCIW 11-02-01	Menu Preparation/Special Diets (Amended 6/14/94)
KCIW 11-03-01	General Guidelines for Food Service Workers
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area
KCIW 11-07-01	Special Religious Diets [~~(Added 4/15/94)~~]
KCIW 12-01-01	Control of Pests and Vermin

KCIW 12-02-01	Laundry and Clothing Issuance
KCIW 12-02-03	Donated Items [~~(Amended 4/15/94)~~]
[~~KCIW 12-04-01 Sanitation and General Living Conditions (Deleted 6/14/94)~~]	
KCIW 12-04-02	Hair Care Services
KCIW 13-01-01	Provision of Medical and Dental Care
KCIW 13-01-02	Preliminary Health Screening and Appraisal
KCIW 13-01-03	Use of Pharmaceutical Products
KCIW 13-03-01	Emergency Care
KCIW 13-03-02	Infirmary Care and Outside Services
KCIW 13-04-01	Medical Alert System
KCIW 13-04-02	Psychiatric/Psychological Services
KCIW 13-06-01	Informed Consent
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines
KCIW 13-08-01	Medical Examination for Employees
KCIW 13-09-01	Suicide Prevention and Intervention Program
KCIW 13-11-01	Infection Control
KCIW 14-01-02	Inmate Rights
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes
KCIW 14-04-01	Inmate Grievance Procedure
KCIW 15-06-01	Restriction Guidelines
KCIW 16-01-01	Inmate Correspondence (Amended 6/14/94)
KCIW 16-02-01	Inmate Access to Telephone
KCIW 16-03-01	Inmate Visiting Regulations (Amended 6/14/94)
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01	Inmate Indigent Fund
KCIW 16-05-01	Inmate Packages
KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations
KCIW 17-01-03	Assessment and Classification Unit Property Guidelines
KCIW 17-02-01	Identification Department Admissions
KCIW 17-05-01	Inmate Personal Property Guidelines
KCIW 18-01-02	Institutional Housing Assignments
KCIW 18-01-03	Honor Program [~~(Amended 4/15/94)~~]
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates
KCIW 18-06-01	Institutional Status Codes
KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 20-01-01	Education Programs
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program
KCIW 20-01-04	Entry - Exit Vocational School
KCIW 20-01-05	Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records
KCIW 20-01-06	Vocational Education: Staffing Patterns/Requirements
KCIW 20-01-07	Vocational Counselor
KCIW 20-01-08	Vocational Education: Community Resources and the Integration with Academic Progress
KCIW 20-01-09	Vocational Education: Support Equipment
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 22-01-04	Inmate Club Activities
KCIW 23-01-01	Religious Services
[~~KCIW 25-01-01 Preparole Progress Report (Deleted 6/14/94)~~]	
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted Community Leave

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 25, 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: 141 employees of the Kentucky Correctional Institution for Women, 415 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:080. Department of Corrections Manuals.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards 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 are incorporated by reference on June 14, 1994 [~~November 29, 1993~~] and hereinafter shall be referred to as Department of Corrections Manuals. 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.

Offender Records Manual - None
Stock Procedure Manual - None
Food Services Manual - None
Classification Manual - (Amended 6/14/94) [~~(Amended 11/29/93)~~]
Diet Manual

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 14, 1994
FILED WITH LRC: June 14, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 25, 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 and William Seabold, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and visitors to all state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:090. Frankfort Career Development Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised June 14, 1994 [~~March 15, 1993~~], are incorporated by reference and shall be referred to as Frankfort Career Development Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

FCDC 01-04-01	Confidentiality of Information Roles and Services of Consultant, Contract Personnel, Governmental Services Supervisors and Volunteers
FCDC 01-05-01	Duties and Responsibilities of FCDC Duty Officer
FCDC 01-09-01	Organization and Assignment of Responsibilities
FCDC 02-02-01	Inventory of Nonexpendable Personal Property
FCDC 02-09-01	Inmate Account Draw and Savings Deposit Transactions Between Inmates
FCDC 02-10-01	Fiscal Management and Control
FCDC 02-11-01	Fiscal Management: Accounting Procedures
FCDC 02-12-01	Fiscal Management: Checking Accounts
FCDC 02-13-01	Purchasing and Receiving
FCDC 06-02-01	Inmate Records
FCDC 08-01-01	Fire Safety Practices [~~(Amended 3/15/93)~~]
FCDC 09-01-02	Institutional Entry and Exit Surveillance and Perimeter Security Procedures
FCDC 09-03-01	Control and Accountability of Flammable Toxic, Caustic and Other Hazardous Materials
FCDC 09-06-08	Searches and Contraband Control
FCDC 11-03-01	Food Service [~~(Amended 3/15/93)~~]
FCDC 12-03-01	Laundry, Clothing, Hygiene and Grooming Services (Amended 6/14/94)
FCDC 12-04-01	Sanitation Practices and Inspections
FCDC 13-01-01	Use of Pharmaceutical Products [~~(Amended 3/15/93)~~]
FCDC 13-01-02	Medical Emergencies [~~(Amended 3/15/93)~~]
FCDC 13-01-03	Informed Consent
FCDC 13-02-01	Inmate Medical Screenings and Health Evaluations [~~(Amended 3/15/93)~~]
FCDC 13-03-01	Psychiatric and Psychological Services
FCDC 13-03-02	Parental Administration of Medications and Use of Psychotropic Drugs
FCDC 13-05-01	Family Notification: Serious Illness, Injury, Major Surgery or Death
FCDC 13-06-01	Chronic and Convalescent Care [~~(Amended 3/15/93)~~]
FCDC 13-08-01	Sick Call/Physician's Weekly Clinic
FCDC 13-09-01	Management of Serious and Infectious Diseases [~~(Amended 3/15/93)~~]
FCDC 13-10-01	Treatment Protocol Regarding First-Aid Procedures, Routine Health Care

FCDC 13-11-01	Health Education: Provision of Special Health Care Needs
FCDC 13-13-01	Physicians Referrals
FCDC 13-14-01	Health Records
FCDC 13-15-01	Routine and Emergency Dental Appointments [~~(Amended 3/15/93)~~]
FCDC 13-16-01	Routine and Emergency Eye Examinations
FCDC 13-17-01	Inmate Death
FCDC 14-01-01	Prohibiting Inmate Authority Over Other Inmates
FCDC 14-02-01	Inmate Grievance System
FCDC 14-03-01	Inmates Shall Not Be Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap or Political Beliefs and Are Protected Against Corporal Punishment
FCDC 14-04-01	Legal Services Program
FCDC 15-01-01	Good Time - Credits
FCDC 15-03-01	Conduct of Adjustment Hearings (Chairperson)
FCDC 15-04-01	Detention Orders and Protective Custody Requests
FCDC 16-01-01	Visiting [~~(Amended 3/15/93)~~]
FCDC 16-02-01	Inmate Correspondence
FCDC 16-03-01	Inmate Access to Telephones
FCDC 16-04-01	Inmate Packages
FCDC 17-01-01	Inmate Property Control
FCDC 17-02-01	Inmate Reception, Orientation, and Discharge
FCDC 18-01-01	Inmate Classification and Review
FCDC 19-01-01	Security and Operation of the Governmental Services Program
FCDC 19-02-01	Inmate Work Programs
FCDC 20-01-01	Academic and Vocational Education
FCDC 22-01-01	Privilege Trips
FCDC 22-01-03	Shopping Trips
FCDC 22-02-01	Recreation and Inmate Activities [~~(Amended 3/15/93)~~]
FCDC 22-02-03	Arts and Crafts Program
FCDC 23-01-01	Religious Services
FCDC 24-01-01	Social Services Program [~~(Amended 3/15/93)~~]
FCDC 24-02-01	Substance Abuse Programs
FCDC 25-01-01	Escorted Leaves
FCDC 25-03-01	Release Preparation Program

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 25, 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, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 45 employees of the Frankfort Career Development Center, 180 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised July 14 [~~April 15~~], 1994 are incorporated by reference and shall be referred to as Bell County Forestry Camp 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.

BCFC 01-02-01	Organization and Assignment of Responsibility
BCFC 01-04-02	Extraordinary Occurrence Procedure
BCFC 01-05-01	Procedures Office: Duties and Responsibilities
BCFC 01-08-01	Public Information and Inmate Access to News Media
BCFC 01-09-01	Staff Participation in Professional Organization and Conferences; Provision for Leave and Reimbursement for Expenses
BCFC 01-11-01	Institutional Duty Officer's Responsibilities
BCFC 02-01-02	Fiscal Management: Accounting Procedures
BCFC 02-01-03	Fiscal Management: Agency Funds
BCFC 02-01-04	Fiscal Management: Insurance
BCFC 02-01-05	Fiscal Management: Budget
BCFC 02-01-06	Fiscal Management: Audit
BCFC 02-02-01	Inmate Accounts
BCFC 02-02-02	Inmate Control of Personal Funds
BCFC 02-02-03	Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
BCFC 02-03-01	Purchase Orders
BCFC 02-04-01	Processing of Invoices
BCFC 02-05-01	BCFC Materials Receiving Procedure
BCFC 02-06-01	Property Inventory
BCFC 04-01-01	Employee Training and Development

BCFC 05-01-01 Information System
BCFC 06-01-01 Offender Records
BCFC 06-02-01 Storage of Expunged Records
BCFC 06-03-01 Court Trips
BCFC 06-03-02 Receipt of Order of Appearance
BCFC 07-04-01 Smoking Control
BCFC 08-02-01 Fire Prevention
BCFC 08-03-01 Fire Procedures
BCFC 08-03-02 Fire Extinguishers and Their Use
BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances
BCFC 08-09-02 OSHA Hazard Communication Program
BCFC 08-10-01 Bell County Forestry Camp Emergency Response Team
BCFC 09-06-01 Search Policy/Disposition of Contraband
BCFC 09-14-01 Bell County Forestry Camp - Restricted Area
BCFC 10-01-01 Special Management Inmates
BCFC 11-01-01 Food Services: General Guidelines
BCFC 11-02-01 Food Service: Security
BCFC 11-03-01 Dining Room Guidelines
BCFC 11-04-01 Food Service: Meals
BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets
BCFC 11-05-02 Health Requirements of Food Handlers
BCFC 11-06-01 Food Service: Inspection and Sanitation
BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products
BCFC 11-08-01 Staff/Visitor Meals
BCFC 12-01-01 Sanitation, Living Conditions Standards, and Clothing Issues
BCFC 12-01-02 Bed Areas, Assignments/Conditions Standards
BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry
BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule
BCFC 12-03-02 Barbershop Services and Equipment Control
BCFC 12-04-01 Institutional Inspections
BCFC 12-05-01 Fire Safety and Use of Noncombustible Receptacles
BCFC 12-06-01 Pest Control
BCFC 13-01-01 Organization of Health Services
BCFC 13-02-01 Health Maintenance Services: Sick Call and Pill Call
BCFC 13-03-01 Dental Policy/Sick Call
BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations
BCFC 13-05-01 Licensure and Training Standards
BCFC 13-06-01 Suicide Prevention and Intervention Program
BCFC 13-06-02 First Aid/CPR Training Program
BCFC 13-06-03 Emergency Medical/Dental Care Services
BCFC 13-07-01 Health Records
BCFC 13-08-01 Special Diets
BCFC 13-09-01 Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death
BCFC 13-10-01 Health Education/Special Health Programs
BCFC 13-11-01 Informed Consent
BCFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
BCFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)
BCFC 13-13-01 Identification of Special Needs Inmates
BCFC 13-14-01 Use of Pharmaceutical Products
BCFC 13-15-01 Medical Restraints
BCFC 13-16-01 Specialized Health Services
BCFC 13-17-01 Vision Care/Optometry Services
BCFC 13-18-01 Infection Control
BCFC 13-19-01 Exposure Control Plan
BCFC 14-01-01 Inmate Rights and Responsibilities
BCFC 14-02-01 Legal Services Program
BCFC 14-03-01 Inmate Grievance Procedure
BCFC 15-01-01 Due Process/Disciplinary Procedures (Amended 6/14/94)
BCFC 16-01-01 Inmate Visiting (Amended 6/14/94)
BCFC 16-02-01 Telephone Communications (Amended 6/14/94)
BCFC 16-03-01 Mail Regulations (Amended 6/14/94)
BCFC 16-03-02 Inmate Packages (Amended 6/14/94)
BCFC 17-01-01 BCFC Inmate Receiving and Orientation Process [(~~Amended 4/15/94~~)]
BCFC 17-03-01 Inmate Personal Property [(~~Added 4/15/94~~)]
BCFC 17-04-01 BCFC Inmate Property Control [(~~Amended 4/15/94~~)]
BCFC 17-05-01 Inmate Canteen [(~~Amended 4/15/94~~)]
BCFC 18-01-01 Institutional Classification Committee
BCFC 18-02-01 Classification Document
BCFC 18-03-01 Classification Process
BCFC 18-03-02 Classification Program Planning
BCFC 18-03-03 Population Category Status
BCFC 18-04-01 Instructions for Six Month Review
BCFC 18-05-01 Transfers to Other Minimum Security Institutions
BCFC 19-01-01 Job and Vocational Program Assignments
BCFC 19-02-01 Government Service Details
BCFC 20-01-01 Academic School (Amended 6/14/94)
[~~BCFC 20-01-02 Testing and Verification Procedure (Deleted 6/14/94)~~]
BCFC 20-02-01 Educational Program Planning (Amended 6/14/94)
BCFC 20-03-01 Academic Curriculum (Amended 6/14/94)
BCFC 21-01-01 Library Services (Amended 6/14/94)
BCFC 22-01-01 Recreation and Inmate Activities
BCFC 22-02-01 Inmate Clubs and Organizations
BCFC 22-02-02 Conducting Inmate Organizational Meetings and Programs
BCFC 22-03-01 Privilege Trips (Amended 6/14/94)
BCFC 23-01-01 Religious Service
BCFC 23-02-01 Visitors for Religious Programs
BCFC 23-03-01 Marriage of Inmates (Amended 6/14/94)
BCFC 24-01-01 Social Services and Counseling Program
BCFC 24-01-02 Casework Services (Amended 6/14/94)
BCFC 25-01-01 Release Preparation Program Description
BCFC 25-02-01 Temporary Release/Community Center Release
BCFC 25-02-02 Furloughs
BCFC 25-03-01 Preparole Progress Report
BCFC 25-03-02 Parole Eligibility Dates
BCFC 25-04-01 Inmate Discharge Procedure
BCFC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 6/14/94)

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 14, 1994
FILED WITH LRC: June 14, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 25, 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: 39 employees of the Bell County Forestry Camp, 200 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:150. Eastern Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These 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 June 14, 1994 [~~July 15, 1993~~], are incorporated by reference and shall be referred to as the Eastern Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

EKCC 01-01-01 Institutional Legal Assistance
EKCC 01-02-01 Public Information and News Media Access
EKCC 01-06-01 Inmate Death
EKCC 01-06-02 Crime Scene Camera
EKCC 01-07-01 Institutional Tours of EKCC
EKCC 01-07-02 EKCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies
EKCC 01-07-03 Outside Consultation and Research
EKCC 01-08-01 Monthly Reports
EKCC 01-09-01 Duty Officer Responsibilities
EKCC 01-10-01 Annual Planning Document and Conference
EKCC 01-10-02 Organization and Assignment of Responsibility
EKCC 01-10-03 Institutional Planning
EKCC 01-13-01 Organization of Operations Manual
EKCC 01-13-02 Monitoring of Operations, Policies and Procedures
EKCC 01-13-03 Formulation and Revision of EKCC Operating Procedures
EKCC 01-13-04 Meetings Conducted and Their Purpose
EKCC 02-01-02 Inmate Canteen
EKCC 02-02-01 Fiscal Management: Agency Funds
EKCC 02-05-01 Fiscal Management: Budget
EKCC 02-08-01 Property Inventory
EKCC 02-08-02 Warehouse Operation and Inventory Control
EKCC 02-08-03 Inventory Control, Nonexpendable Items
EKCC 02-08-04 Warehouse Policy and Procedure
EKCC 02-11-01 Purchase and Supply Requisition
EKCC 02-12-01 Fiscal Management: Audits
EKCC 02-13-01 Fiscal Management: Accounting Procedures
EKCC 02-14-01 Screening Disbursements from Inmate Personal Accounts
EKCC 04-01-01 Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses
EKCC 04-02-01 Emergency Preparedness Training
EKCC 04-02-02 Advisory Training Committee
EKCC 05-01-01 Inmate Participation in Authorized Research
EKCC 05-02-01 Information System
EKCC 06-01-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers
EKCC 06-03-01 Case Record Management
EKCC 10-02-01 Special Management Unit: Operating Procedures and Living Conditions
EKCC 10-02-02 Special Management Inmates: Assignment, Classification, Reviews and Release
EKCC 10-02-03 Grooming Standards for Special Management
EKCC 11-02-01 Meal Planning for General Population
EKCC 11-02-02 Food Service: Purchasing, Storage and Farm Products
EKCC 11-03-01 Food Service: Menu, Nutrition and Special Diets
EKCC 11-04-01 Food Service: Inspections and Sanitation
EKCC 11-04-02 Medical Screening of Food Handlers
EKCC 11-05-01 Food Service: Security
EKCC 11-06-01 Food Service: Kitchen and Dining Room Inmate Worker Responsibilities
EKCC 11-07-01 Dining Room Guidelines
EKCC 11-08-01 OJT Food Service Training Placement
EKCC 12-01-01 Vermin and Insect Control
EKCC 12-02-01 Inmate Dress and Use of Access Areas
EKCC 13-01-01 Pharmacy Policy (Amended 6/14/94)
EKCC 13-02-01 Emergency Medical Procedure (Amended 6/14/94)
[~~EKCC 13-02-02 Disaster and Mass Casualty Plan (Deleted 6/14/94)~~]
EKCC 13-02-03 Consultations (Amended 6/14/94)
EKCC 13-02-04 Medical Services (Amended 6/14/94)
EKCC 13-02-05 Health Evaluations (Amended 6/14/94)
EKCC 13-02-06 Sick Call (Amended 6/14/94)
EKCC 13-02-07 First Aid Kits
[~~EKCC 13-02-08 Transportation of Injured or Ill Staff (Deleted 6/14/94~~
~~EKCC 13-02-09 Emergency Dental Care (Deleted 6/14/94~~
~~EKCC 13-02-10 Dental Services for Special Management Units (Deleted 6/14/94)~~
~~EKCC 13-02-11 Suicide Prevention and Intervention Program (Deleted 6/14/94)~~]
EKCC 13-05-01 Aids and Hepatitis B
EKCC 13-07-01 Serious Illness, Major Injuries, Death (Amended 6/14/94)
EKCC 13-08-01 Psychiatric and Psychological Services (Amended 6/14/94)
EKCC 13-08-02 Psychiatric and Psychological Services Team (Amended 6/14/94)
EKCC 13-08-03 Suicide Prevention and Intervention Program (Amended 6/14/94) (Renumbered from 13-02-11
EKCC 13-08-04 Detoxification (Amended 6/14/94) (Renumbered

from 13-10-01)
EKCC 13-09-01 Dental Services for Special Management Units (Amended 6/14/94) [~~Optometric Services~~]
EKCC 13-10-01 Optometric Services (Amended 6/14/94) [~~Detoxification~~]
[~~EKCC 13-11-01 Therapeutic Diets (Deleted 6/14/94)~~]
EKCC 13-12-02 Resident Transfer/Medical Profiles (Amended 6/14/94)
EKCC 13-13-01 Syringes, Needles and Sharps Control (Amended 6/14/94)
EKCC 13-14-01 Fire and Emergency Evacuation Plan (Amended 6/14/94)
EKCC 13-15-01 Medical Department - General Housekeeping, Sanitation and Protection Standards and Requirements (Amended 6/14/94)
EKCC 13-16-01 Medical Records (Amended 6/14/94)
EKCC 14-02-01 Personal Hygiene Items: Issuance and Replacement Schedule
EKCC 14-04-01 Inmate Legal Services
EKCC 14-06-01 Inmate Grievance Procedure
EKCC 14-07-01 Inmate Rights and Responsibilities
EKCC 15-01-01 Hair and Grooming Standards: Inmate Barber Shop
EKCC 15-05-01 Restoration of Forfeited Good Time
EKCC 15-06-01 Due Process/Disciplinary Procedure
EKCC 16-01-01 Inmate Visiting
EKCC 16-02-01 Inmate Correspondence
EKCC 16-03-01 Inmate Telephone Procedures
EKCC 16-05-01 Inmate Access to and Communication with EKCC Staff
EKCC 16-05-02 Unit Bulletin Boards
EKCC 17-01-01 Authorized Inmate Personal Property
EKCC 17-01-02 Personal Property Control
EKCC 17-02-01 Assessment/Orientation
EKCC 17-04-01 Inmate Reception Process at the EKCC
EKCC 18-01-01 Inmate Classification
EKCC 18-10-01 Preparole Progress Report
EKCC 18-13-01 Meritorious Housing
EKCC 18-13-03 Enhanced Supervision Unit [~~(Added 7/15/93)~~]
EKCC 19-04-01 Inmate Work Program
EKCC 20-01-01 Educational Program
EKCC 21-01-01 Library Services
EKCC 22-02-01 Recreation and Inmate Activities
EKCC 23-01-01 Religious Services
EKCC 23-01-02 Muslim Services - Ramadan
EKCC 24-01-01 Social Services and Counseling Program
EKCC 25-02-01 Inmate Discharge Procedure
EKCC 25-03-01 Prerelease Preparation
EKCC 25-04-01 Inmate Furloughs
EKCC 25-06-01 Community Center Program
EKCC 26-01-01 Citizens Involvement and Volunteers

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 14, 1994
FILED WITH LRC: June 14, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 25, 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, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 372 employees of the Eastern Kentucky Correctional Complex, 1507 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.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:180. Recordkeeping; statistics.

RELATES TO: KRS 338.161
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Department of Workplace Standards by KRS 338.161, this regulation provides for recordkeeping and reporting by employers covered under KRS Chapter 338 as necessary and appropriate for the enforcement of KRS Chapter 338, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics.

Section 1. Definitions. (1) "Act" means the Kentucky Occupational Safety and Health Act of 1972 (KRS Chapter 338).
(2) The definitions and interpretations contained in KRS 338.015 shall be applicable to such terms when used in this administrative regulation.
(3) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:
(a) Fatalities, regardless of the time between the injury and death, or the length of the illness; or
(b) Lost workday cases, other than fatalities, that result in lost workdays; or
(c) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve: loss of consciousness or

restrictions of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(4) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(5) "First aid" is any one (1) time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one (1) time treatment, and follow-up visit(s) for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(6)(a) "Establishment": a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities operated from the same physical location as a lumberyard), each activity shall be treated as a separate establishment.

(b) For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.

(c) Records for personnel who do not primarily report to work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

(7) "Lost workdays": the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

(8) "Establishments classified in standard industrial classification codes (SIC) 52-89."

(a) Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

(b) Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

(c) Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

(d) Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

(e) The primary activity of an establishment is determined as follows: for finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.

Section 2. [~~1.~~] Log and Summary of Occupational Injuries and Illnesses. (1) Each employer shall, except as provided in subsection (3) [~~(2)~~] of this section, Section 14, and Section 15 of this regulation: maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment; and enter each recordable injury and illness on the log and summary as early as practicable but not later than six (6) working days after receiving information that a recordable injury or illness has occurred. For this purpose, Occupational Safety and Health Administration OSHA Form No. 200 or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form and instructions on Form OSHA No. 200.

(2) Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data processing equipment, or both, under the following circumstances:

(a) There is available at the place where the log and summary are maintained sufficient information to complete the log and summary to a date within six (6) working days after receiving information that a recordable case has occurred, as required by subsection (1) of this section.

(b) At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within forty-five (45) calendar days.

Section 3. [~~2.~~] Period Covered. Records shall be established on a calendar year basis.

Section 4. [~~3.~~] Supplementary Record. In addition to the log and summary of occupational injuries and illnesses provided for under Section 2 [~~1~~] of this regulation, each employer shall have available at each establishment within six (6) working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration Form OSHA No. 101. Workers' Compensation, insurance, or other reports are acceptable alternative records if they contain the information required by Form OSHA No. 101. If no acceptable alternative record is maintained for other purposes, Form OSHA No. 101 shall be used or the necessary information shall be otherwise maintained. The Kentucky workers' compensation form SF-1 is an acceptable alternative record for those employers covered by the Workers' Compensation Act.

Section 5. [~~4.~~] Annual Summary. (1) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the Form OSHA No. 200 and the following information from that form: calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. A Form OSHA No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeroes must be entered on the totals line, and the form must be posted.

(2) The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on Form OSHA No. 102.

(3) Each employer, or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the summary certifying that the

summary is true and complete.

(4)(a) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under 803 KAR 2:060. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report for work at a single establishment, or who do not report to any fixed establishment on a regular basis, employer shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multiestablishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

(b) A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to KRS 338.991.

Section 6. [~~5.~~] Retention of Records. Records provided for in Sections 2, 4, and 5 [~~1, 3, and 4~~] of this regulation (including Form OSHA No. 200 and its predecessor Form OSHA No. 100 and OSHA No. 102) shall be retained in each establishment for five (5) years following the end of the year to which they relate.

Section 7. [~~6.~~] Access to Records. (1) Each employer shall provide, upon request, records provided for in Sections 2, 4, and 5 [~~1, 3, and 4~~] of this regulation for inspection and copying by:

(a) Compliance safety and health officers of the Occupational Safety and Health Program, Kentucky Department of Labor, during an inspection or by other representatives of the Commission of the Department of Workplace Standards authorized to make statistical compilations, pursuant to the authority of KRS Chapter 338;

(b) Representatives of the Bureau of Labor Statistics, United States Department of Labor; and

(c) Representatives of the Secretary of Health, Education, and Welfare during any investigation under Section 20(b) of the Williams-Steiger Occupational Safety and Health Act of 1970.

(2) The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in Section 1 of this regulation shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

(3) Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(4) Access to the log, provided under this section, shall pertain to all logs retained under the requirements of Section 5 of this regulation.

Section 8. [~~7.~~] Reporting of Fatality or Multiple Hospitalization Accidents. (1) Within eight (8) [~~forty-eight (48)~~] hours after the death of any employee from a work-related incident or the inpatient hospitalization of three (3) or more employees as a result of a work-related incident [~~occurrence of an employment accident which is fatal to one (1) or more employees or which results in hospitalization of five (5) or more employees~~], the employer of any employees so affected [~~injured or killed~~] shall orally report the fatality/multiple hospitalization by telephone or in person [~~accident either orally or in writing~~] to the Commission of the Department of Workplace Standards, or to the Occupational Safety and Health Administration (OSHA) by using the OSHA toll-free central telephone number. [~~The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The commissioner may require such additional reports, in writing or otherwise, as he deems necessary concerning the accident.~~]

(2) This requirement applies to each such fatality or hospitalization of three (3) or more employees which occurs within thirty (30) days of an incident.

(3) Exception: If the employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under paragraphs (1) and (2) of this section, the employer shall make the report within eight (8) hours of the time the incident is reported to any agent or employee of the employer.

(4) Each report required by this section shall relate the following information: establishment name, location of the incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

Section 9. [~~8.~~] Falsification, or Failure to Keep Records or Reports. (1) KRS 338.991(8) provides that "whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment, for not more than six (6) months or both."

(2) Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in KRS 338.991.

Section 10.[~~9.~~] Change of Ownership. Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this part. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under Section 5.

[~~Section 10. Definitions. (1) "Act" means the Kentucky Occupational Safety and Health Act of 1972 (KRS Chapter 338).~~

~~(2) The definitions and interpretations contained in KRS 338.015 shall be applicable to such terms when used in this regulation.~~

~~(3) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:~~

~~(a) Fatalities, regardless of the time between the injury and death, or the length of the illness; or~~

~~(b) Lost workday cases, other than fatalities, that result in lost workdays; or~~

~~(c) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve: loss of consciousness or restrictions of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.~~

~~(4) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.~~

~~(5) "First aid" is any one (1) time treatment, and any follow up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one (1) time treatment, and follow up visit(s) for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.~~

~~(6)(a) "Establishment": a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities operated from the same physical location as a lumberyard), each activity shall be treated as a separate establishment.~~

~~(b) For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.~~

~~(c) Records for personnel who do not primarily report to work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.~~

~~(7) "Lost workdays": the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.~~

~~(8) "Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89."~~

~~(a) Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.~~

~~(b) Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.~~

~~(c) Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.~~

~~(d) Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.~~

~~(e) The primary activity of an establishment is determined as follows: for finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.]~~

Section 11. Petitions for Recordkeeping Exceptions. (1) Petitions for recordkeeping exceptions shall be filed in accordance with the provisions of 29 CFR Part 1904.13.

(2) Any employer filing a petition for recordkeeping exceptions in accordance with CFR Part 1904.13 shall notify the Commissioner of the Department of Workplace Standards that he is making such application and the results thereof;

(3) Exceptions granted pursuant to 29 CFR Part 1904.13 shall be recognized by the commissioner.

Section 12. Employees not in Fixed Establishments. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of Sections 2, 4, and 5 [~~1, 3, and 4~~] of this regulation with respect to such employees by:

(1) Maintaining the required records for each operation or group of operations, which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

(2) Having the address and telephone number of the central place available at each worksite; and

(3) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

Section 13. Duties of Employer. Upon receipt of an occupational injuries and illnesses survey form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

Section 14. Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

(1) Obligation to report under Section 8 [~~7~~] of this regulation concerning fatalities or multiple hospitalization accidents; and

(2) Obligation to maintain a log and summary of occupational injuries and illnesses under Section 2 [~~1~~] of this regulation and to make reports under Section 13 of this regulation upon being notified in writing by the Bureau of Labor Statistics or the Kentucky Department of Workplace Standards that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

Section 15. Private Sector Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80). A private sector employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

(1) Obligation to report under Section 8 [~~7~~] of this regulation concerning fatalities or multiple hospitalization accidents; and

(2) Obligation to maintain a log of occupational injuries and illnesses under Section 13 of this regulation, upon being notified in writing by the Bureau of Labor Statistics or the Kentucky Department of Workplace Standards that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

Section 16. Public Notice. (1) In accordance with KRS Chapter 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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 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: William L. Ralston, Kentucky Labor Cabinet. 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers covered by KRS Chapter 338.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected by these amendments and additions, as the changes simply modify existing requirements.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

(b) Reporting and paperwork requirements: These amendments will not entail any additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of this regulation.

(3) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these amendments are simply changes in reporting procedures by employers dealing with workplace fatalities or multiple hospitalizations resulting from a workplace incident that have been previously enforced.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these amendments.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These amendments adopt the changes to reporting requirements as published in the Federal Register, Volume 59, Number 63, April 1, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These adopted amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect all local government entities.

3. State the aspect or service of local government to which this administrative regulation relates. The regulation as it now reads and the proposed revisions do not relate to any particular aspect or service of local government, but require employers in the private sector, as well as local and state government entities to keep occupational safety and health injury and illness records and report fatalities and multiple hospitalizations resulting from a workplace incident. The proposed revisions modify the reporting time of any fatality or multiple hospitalizations resulting from a workplace incident.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments are to comply with federal regulations relating to reporting requirements of workplace fatalities or multiple hospitalizations as a result of an incidents in the workplace. There will be no increase or decrease in local government revenues or expenditures. These amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:308. Adoption of 29 CFR Part 1910.132-.140.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.132-.140 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: [~~29 CFR 1910.134 is amended as follows:~~]

(1) The addition to 29 CFR 1910.132, "General Requirements," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, is incorporated by reference.

(2) Revisions to 29 CFR 1910.133, "Eye and Face Protection," as

published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

(3) 29 CFR 1910.134 is amended as follows:

(a) 29 CFR 1910.134(b)(10) shall read: "A physician shall determine whether or not an employee has any medical conditions that would preclude the use of respirators. The physician shall follow the guidance in ANSI Z88.6, "American National Standard for Respiratory Protection-Respirator Use-Physical Qualifications for Personnel" on the frequency and content of the examination.

(b) [~~(1)~~] The amendment to 29 CFR 1910.134(b)(11), "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(c) [~~(2)~~] 29 CFR 1910.134(c) shall read: "Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2 - 1980."

(d) [~~(3)~~] 29 CFR 1910.134(d) the third sentence shall read: "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1 - 1973."

(e) [~~(4)~~] 29 CFR 1910.134(g) shall read: Identification of Air-purifying Respirator Canisters and Cartridges.

1. [~~(a)~~] The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

2. [~~(b)~~] All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

3. [~~(c)~~] On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

CANISTER FOR _____
(Name of atmospheric contaminant)

or

CARTRIDGE FOR _____
(Name of atmospheric contaminant)

In addition, either or both of subparagraphs 1 and 2 of this paragraph, and subparagraph 3 of this paragraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

1. For respiratory protection in atmospheres containing not more than _____ by volume of
(Concentration)

_____
(Name of atmospheric contaminant)

2. For respiratory protection in atmospheres containing

_____
(Type of particulate contaminant)

3. Do not use in atmospheres containing less than nineteen and five-tenths (19.5) percent oxygen by volume at sea level.

4. [~~(d)~~] Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

(f) [~~(4)~~] 29 CFR 1910.134 Table I-1 shall read:

TABLE I-1
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to Be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials (except tritium and noble gases)	Purple	218	Strong purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid orange

NOTES:

1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color.

4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford.

(4) Revisions to 29 CFR 1910.135, "Head Protection," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

(5) Revisions to 29 CFR 1910.136, "Foot Protection," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

(6) Revisions to 29 CFR 1910.137, "Electrical Protective Equipment," as published in the Federal Register, Volume 59, Number 20, January 31, 1994, are incorporated by reference.

(7) 29 CFR 1910.138, "Hand Protection," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, is incorporated by reference.

(8) Appendices A and B added to Subpart I, as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Secretary
APPROVED BY AGENCY: June 14, 1994
FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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 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: William L. Ralston, Kentucky Labor Cabinet. 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry.

(a) Direct and indirect costs or savings to those affected: Costs to affected employers is minimal. The Occupational Safety and Health Administration (OSHA) estimates a total cost of $52.4 million per year for some 825,265 affected establishments nationwide to comply with these proposed changes (average, approximately $64) for amendments and additions in Sections 1(1), (2), (4), (5), (6), (7) and (8). Nationwide, OSHA estimates that compliance with this regulation will save the affected firms over $150,000,000 annually from the reduction of lost workdays to injured employees, administrative costs in handling insurance claims, work interruption costs, replacement workers, rehabilitation of the injured worker, accident investigation costs, and so on. The amendment addressed in Section 1(3)(a) will have no additional costs or savings to affected employers.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

(b) Reporting and paperwork requirements: These amendments will not entail any reporting to the agency. It is required that the employer certify in writing that a hazard assessment of the workplace has been accomplished.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements for the promulgating administrative body as a result of this proposed regulation.

(3) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these amendments and additions in Sections 1(1), (2), (4), (5), (6), (7) and (8) are proposed as result of federal changes in its occupational safety and health regulations. Alternative methods were not considered as this amendment addressed in Section 1(3)(a) simply clarifies enforcement.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these amendments.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments and additions in Sections 1(1), (2), (4), (5), (6), (7) and (8) adopt federal regulations. The amendment in Section 1(3)(a) adopts administrative regulations clarifying, for the employer, the minimum requirements of an acceptable respiratory protection program.

3. Minimum or uniform standards contained in the federal mandate. These amendments adopt the corrections and additions to the previously adopted regulations in 29 CFR Part 1910, as published in the Federal Register, Volume 59, Number 66, April 6, 1994. The amendment in Section 1(3)(a) adopts administrative regulations clarifying, for the employer, the minimum requirements of an acceptable respiratory protection program which is consistent with federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These adopted amendments in Sections 1(1), (2), (4), (5), (6), (7) and (8) are identical to the federal regulations. This administrative regulation requires the same of the employer industry as federal policy, including the amendment in Section 1(3)(a).

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect all local government entities.

3. State the aspect or service of local government to which this administrative regulation relates. These proposed amendments affect safety and health of employees of local government.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments are to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. These amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:309. Adoption of 29 CFR Part 1910.141-.149.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1910.141-.149 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended January 15, 1993, with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.141(c)(2)(i) shall read as follows: "Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy."

(2) Amendment to 29 CFR 1910.145(f), "Accident Prevention Tags," as published in Federal Register, Volume 51, Number 182, September 19, 1986, is incorporated by reference.

(3) 29 CFR 1910.146, "Permit-required Confined Spaces", as published in the Federal Register, Volume 58, Number 9, January 14, 1993, is incorporated by reference with the following additions, exceptions, and deletions:

(a) [~~(4)~~] The corrections to 29 CFR 1910.146, "Permit-required Confined Spaces", as published in the Federal Register, Volume 58, Number 123, June 29, 1993, are adopted by reference.

(b) The corrections to 29 CFR 1910.146, "Permit-Required Confined Spaces", as published in the Federal Register, Volume 59, Number 96, May 19, 1994, are incorporated by reference.

(4) [~~(5)~~] Revision to 29 CFR 1910.147, as published in the Federal Register, Volume 54, Number 169, September 1, 1989, is incorporated by reference with the following additions, exceptions, and deletions:

(a) 29 CFR 1910.147(c)(2)(ii) is amended to read: "If an energy isolating device is capable of being locked out, the employer's energy control program under paragraph (c)(1) of this section shall utilize lockout."

(b) 29 CFR 1910.147(c)(3) is amended to read: "Full employee protection. (i) When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program."

(c) "Where tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment will be fastened at the same point at which the lock would have been attached."

(d) Revision to 29 CFR 1910.147, as published in the Federal Register, Volume 55, Number 183, September 20, 1990, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Secretary
APPROVED BY AGENCY: June 14, 1994
FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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 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: William L. Ralston, Kentucky Labor Cabinet. 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in general industry.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected by this amendment, as it simply adds the metric equivalent to a measurement previously shown only in feet, and lists in an appendix an optional piece of equipment which may be used.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this amendment which will increase or decrease costs. There will be no affect on competition.

(b) Reporting and paperwork requirements: This amendment will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this amendment.

(a) Direct and indirect costs or savings:
(1) First year:
(2) Continuing costs or savings:
(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed regulation.

(3) Assessment of anticipated effect on state and local revenues: This proposed amendment will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed amendment simply adds the metric equivalent to a measurement previously only shown in feet, and lists in an appendix an optional piece of equipment which may be used.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of this proposed amendment.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This proposed amendment adopts the corrections to the previously adopted regulations in 29 CFR 1910.146, as published in the Federal Register, Volume 59, Number 96, May 19, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These proposed changes are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This proposed amendment imposes no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed amendment affect all local government entities that have employees who work in confined spaces.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who work in confined spaces.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:317. Adoption of 29 CFR Part 1910.261-.275.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.261-.275 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The amendment to 29 CFR 1910.261, "Pulp, Paper, and Paperboard Mills," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(2) The amendment to 29 CFR 1910.265(d)(2) (iv)(c), "Sawmills," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(3) The amendment to 29 CFR 1910.265, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(4) The amendments to 29 CFR 1910.266(c)(4) (iii) and (iv), "Pulpwood Logging," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(5) The amendment to 29 CFR 1910.266, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(6) 29 CFR 1910.268(c), "Telecommunications," shall be revised as follows: Revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987, are incorporated by reference.

(7) 29 CFR 1910.269, "Electric Power Generation, Transmission, and Distribution", as published in the Federal Register, Volume 59, Number 20, January 31, 1994, is incorporated by reference.

(8) [~~(7)~~] 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 52, Number 251, December 31, 1987, is incorporated by reference.

(a) The amendments to 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 53, Number 96, May 18, 1988, are incorporated by reference.

(b) The amendment to 29 CFR 1910.272, as published in the Federal Register, Volume 55, Number 119, June 20, 1990, is incorporated by reference.

(9) [~~(8)~~] The amendment to 29 CFR 1910.275, as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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 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: William L. Ralston, Kentucky Labor Cabinet. 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers that generate, transmit, and distribute electric power.

(a) Direct and indirect costs or savings to those affected:

1. First year: The Occupational Safety and Health Administration (OSHA) calculated first year costs to the 441 small utilities (those having 1-19 employees) across the country to total $140,535, an average of approximately $301 per establishment. Total costs to the 1693 large utilities (20 or more employees) will run $13,602,408, an average of approximately $8035 per establishment. Nationwide, compliance with this proposed regulation is expected to prevent 59 fatalities and 323 lost workday injuries per year.

2. Continuing costs or savings: Annual projected recurring costs to small utilities are projected to average approximately $264 per utility. For the larger utilities the recurring costs are expected to average approximately $6109. Through increased employee training and administrative emphasis on hazard recognition, OSHA estimates that an additional 2 fatalities and 1310 lost workday injuries will be prevented annually.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this proposed amendment which will increase or decrease costs. There will be no affect on competition.

(b) Reporting and paperwork requirements: These amendments will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this amendment.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this regulation.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this amendment adopts federal standards, 29 CFR 1910.269, "Electric Power Generation, Transmission, and Distribution," as published in the Federal Register, Volume 59, Number 20, January 31, 1994.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of this amendment.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment adopts 29 CFR Part 1910.269, "Electric Power Generation, Transmission, and Distribution," as published in the Federal Register, Volume 59, Number 20, January 31, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment affects all local government entities engaged in electric power generation, transmission, and distribution.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects the safety and health of employees of local government who are involved in electric power generation, transmission, and distribution.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures other than costs and savings shown on the Regulatory Impact Analysis. This amendment will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:318. Adoption of 29 CFR Part 1910.301-1910.399.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.301-.399 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions,

exceptions, and deletions:

(1)(a) The additions to 29 CFR 1910.331, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) The revisions to 29 CFR 1910.331, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

(c) The addition to 29 CFR 1910.331, "Scope", as published in the Federal Register, Volume 59, Number 20, January 31, 1994, is incorporated by reference.

(2)(a) The additions to 29 CFR 1910.332, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) 1910.332(b)(2)(iii)(C) is amended to read as follows: "If a lock cannot be applied, tagging procedures shall provide a level of safety equivalent to that obtained by the use of a lock, as outlined in paragraph (b)(2)(iii)(D)."

(3)(a) The additions to 29 CFR 1910.333, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) The revisions to 29 CFR 1910.333, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

(c) The addition to 29 CFR 1910.333, "Selection and Use of Work Practices", as published in the Federal Register, Volume 59, Number 20, January 31, 1994, is incorporated by reference.

(4) The revisions to 29 CFR 1910.334, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

(5) The additions to 29 CFR 1910.335, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(6) The additions to 29 CFR 1910.384, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(7)(a) The additions to 29 CFR 1910.399, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) The revisions to 29 CFR 1910.399, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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 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: William L. Ralston, Kentucky Labor Cabinet. 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the category classified as general industry that generate, transmit, and distribute electric power.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected by these amendments, as these are simply notes clarifying the coverage of the regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

(b) Reporting and paperwork requirements: These amendments will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed amendments.

(3) Assessment of anticipated effect on state and local revenues: These proposed amendments will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these amendments simply notes clarifying coverage of the regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These proposed amendments adopt minor additions to previously adopted regulations in 29 CFR Part 1910. These amendments were published in the Federal Register, Volume 59, Number 20, January 31, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate? These adopted amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These proposed amendments affect all local government entities that generate, transmit, and distribute electric power.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who work in electric power generation, transmission, and distribution.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments are to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. These amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000- .1500.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended February 15, 1990 and May 15, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.1000, "Air Contaminants", Table Z-1 is amended as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference.

(a) 29 CFR 1910.1000, "Air Contaminants", Tables Z-1-A, Z-2 and Z-3 as published in Federal Register, Volume 54, Volume Number 12, January 19, 1989 are incorporated by reference.

(b) 4,4'-"Methylene bis (2-chloroaniline)", found in Table Z-1-A of 29 CFR 1910.1000, as published in the Federal Register, Volume 54, Number 12, January 19, 1989, is hereby revoked.

(c) Revisions to 29 CFR 1910.1000, "Air Contaminants", Table Z-1-A, as published in the Federal Register, Volume 54, Number 127, July 5, 1989, is incorporated by reference.

(d) Revisions to 29 CFR 1910.1000, "Air Contaminants", Table Z-1-A, as published in the Federal Register, Volume 54, Number 170, September 5, 1989, is incorporated by reference.

(e) 29 CFR 1910.1000, Table Z-2, "Benzene", shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 176, September 11, 1987 are incorporated by reference.

(f) 29 CFR 1910.1000, Table Z-2, "Formaldehyde", as published in the Federal Register, Volume Number 52, December 4, 1987, is amended.

(g) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 57, Number 112, June 10, 1992, are incorporated by reference.

(h) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

(i) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(j) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(k) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 58, Number 142, July 27, 1993, are incorporated by reference.

(2) 29 CFR 1910.1001, "Asbestos", is amended as follows:

(a) Amendments as published in the Federal Register, Volume 51, Number 119, June 20, 1986, are incorporated by reference.

(b) 29 CFR 1910.1001(d)(6)(ii) is amended to read: "The employer shall ensure that all sampling will be conducted in accordance with the ORM in Appendix A, before sampling commences."

(c) 29 CFR 1910.1001(d)(6)(iv) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the criterion specified in Appendix A. This notice shall be given prior to the start of the analyses."

(d) 29 CFR 1910.1001(g)(3)(i) is amended to read: "Where respiratory protection is required, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(e) 29 CFR 1910.1001(j)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (j)(1)(i) of the section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(f) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, October 17, 1986, Volume 51, No. 201, is incorporated by reference.

(g) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(h) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(i) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, Volume 54, Number 243, December 20, 1989, are incorporated by reference.

(j) Amendments, revisions, and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and

Actinolite", as published in Federal Register, Volume 55, Number 24, February 5, 1990, are incorporated by reference.

(k) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.

(l) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(m) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(n) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 57, Number 126, June 30, 1992, are incorporated by reference.

(3) The amendment to 29 CFR 1910.1003, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(4) The amendment to 29 CFR 1910.1004, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(5)(a) 29 CFR 1910.1005 "4,4'-methylene bis (2-chloroaniline)" and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), "Laboratory Activities", printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(b) Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows: "Premixed Solutions: Where 4,4'-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(6) The amendment to 29 CFR 1910.1006, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(7) The amendment to 29 CFR 1910.1007, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(8) The amendment to 29 CFR 1910.1008, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(9) The amendment to 29 CFR 1910.1009, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(10) The amendment to 29 CFR 1910.1010, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(11) The amendment to 29 CFR 1910.1011, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(12) The amendment to 29 CFR 1910.1012, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(13) The amendment to 29 CFR 1910.1013, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(14) The amendment to 29 CFR 1910.1014, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(15) The amendment to 29 CFR 1910.1015, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(16) The amendment to 29 CFR 1910.1016, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(17) The amendment to 29 CFR 1910.1017, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(18) The amendment to 29 CFR 1910.1018, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(19) 29 CFR 1910.1025, "Occupational Exposure to Lead" shall be amended as follows:

(a) "Table 1 - Implementation Schedule" is amended to read:

TABLE 1 - Implementation Schedule

INDUSTRY[1]	COMPLIANCE DATES 200 ug/m³	100 ug/m³	50
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988
Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing	(2)	N/A	June 29, 1982
Lead Pigment Manufacture, Nonferrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of Copper, and Lead Casting	(2)	N/A	N/A
All Other Industries	(2)	N/A	June 11,1984

[1]Includes ancillary activities located on the same worksite.

[2] On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

(b) Revision to 1910.1025, as published in the Federal Register, Volume 54, Number 131, July 11, 1989 is incorporated by reference.

(c) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in Federal Register, Volume 55, Number 30, February 13, 1990, are incorporated by reference.

(d) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in Federal Register, Volume 56, Number 105, May 31, 1991, are incorporated by reference.

(20) Amendments to 29 CFR 1910.1027, "Cadmium", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(21) Amendments to 29 CFR 1910.1027, "Cadmium", as published in the Federal Register, Volume 55, Number 77, April 23, 1993, are incorporated by reference.

(22) 29 CFR 1910.1028, "Benzene", as published in the Federal

Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(23) 29 CFR 1910.1029, "Coke Oven Emissions", shall be amended as follows: Revision as published in the Federal Register, Volume 50, Number 178, September 13, 1985 are incorporated by reference.

(24) 29 CFR 1910.1030, "Bloodborne Pathogens", as published in the Federal Register, Volume 56, No. 235, is incorporated by reference with the following revisions, additions, or deletions:

(a) 29 CFR 1910.1030(d)(3)(ix) is amended to read: Gloves. Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

(b) 29 CFR 1910.1030(d)(3)(ix)(D) is removed.

(25) Amendments to 29 CFR 1910.1030, "Bloodborne Pathogens", as published in the Federal Register, Volume 57, Number 127, are incorporated by reference.

(26) Corrections to 29 CFR 1910.1043, "Cotton Dust" as published in the Federal Register, Volume 51, Number 128, July 3, 1986, are incorporated by reference.

(27) The amendment to 29 CFR 1910.1044, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(28) The amendment to 29 CFR 1910.1045, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(29) Amendments and corrections to 29 CFR 1910.1047, "Ethylene Oxide and Appendices A, B, C and D", as published in the Federal Register, Volume 51, Number 132, July 10, 1986 are incorporated by reference.

(a) The amendments to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide", as published in the Federal Register, Volume 53, Number 66, April 6, 1988, are incorporated by reference.

(b) Revisions to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide", as published in Federal Register, Volume 53, Number 143, July 26, 1988, are incorporated by reference.

(30) 29 CFR 1910.1048, "Formaldehyde", as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference.

(a) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in Federal Register, Volume 53, Number 170, September 1, 1988, are incorporated by reference.

(b) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 54, Number 133, July 13, 1989, is incorporated by reference.

(c) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 57, Number 102, May 27, 1992, are incorporated by reference.

(d) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 57, Number 112, June 10, 1992, are incorporated by reference.

(e) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 57, Number 118, June 18, 1992, are incorporated by reference.

(31) Amendments, revisions, and additions to 29 CFR 1910.1101, "Asbestos", as published in Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(32) Amendments to 29 CFR 1910.1050, "Methylenedianiline", as published in the Federal Register, Volume 57, Number 154, August 10, 1992, are incorporated by reference.

(33) Amendments to 29 CFR 1910.1101, "Asbestos", as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(34) 29 CFR 1910.1200, "Hazard Communication", shall be amended as follows:

(a) Amendments as published in the Federal Register, Volume 52, Number 163, August 24, 1987 are incorporated by reference.

(b) Revision of 29 CFR 1910.1200(i)(3), "Hazard Communication", and an amendment removing the last paragraph in 1910.1200 Appendix D, as published in the Federal Register, Volume 51, Number 189, September 30, 1986, are incorporated by reference.

(c) The revisions to 29 CFR 1910.1200, "Hazard Communication", as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

(35) 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories", as published in Federal Register, Volume 55, Number 21, January 31, 1990, are incorporated by reference.

(36) Amendments to 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories", as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

(37) Amendments to 29 CFR 1910.1500, "Standards Organizations", as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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 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: William L. Ralston, Kentucky Labor Cabinet. 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected by this amendment, as these revisions to the current rule are minor technical changes designed to clarify the existing regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this amendment which will increase or decrease costs. There will be no affect on competition.

(b) Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this amendment.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed change.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these revisions are simply minor technical changes to an existing regulation which clarify certain provisions.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of this amendment.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment adopts the revisions to the previously adopted regulations of 29 CFR 1910.1200, as published in the Federal Register, Volume 59, Number 27, February 9, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This adopted amendment is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment affects all local government entities that have employees working with hazardous substances.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who work with or are exposed to hazardous substances.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.63.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1926.50-.66, revised as of June 30, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) The addition to 29 CFR 1926.50, "Medical Services and First Aid", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(2) The additions to 29 CFR 1926.51, "Sanitation", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(3) The additions and corrections to 29 CFR 1926.53, "Ionizing Radiation", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(4) The additions to 29 CFR 1926.55, "Gases, Vapors, Fumes Dusts, and Mists", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(5) The additions to 29 CFR 1926.57, "Ventilation", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(6) 29 CFR 1926.58, "Asbestos, Tremolite, Anthophylite, and Actinolite," as published in the Federal Register, Volume 51, Number 119, June 20, 1986 is adopted by reference with the following amendments:

(a) 29 CFR 1926.58(e)(6)(iii) is amended to read: "The employer shall ensure that contractors provide in writing that they have a competent person meeting the requirements of paragraph (b) "competent person" and paragraphs (e)(6)(ii) and (III) before work commences."

(b) 29 CFR 1926.58(f)(3) is amended to read: "The respirators required by this exception are to be Type "C" supplied - air respirators; continuous flow or pressure - demand class."

(c) 29 CFR 1926.58(f)(5)(ii) is amended to read: "The employer shall ensure that all sampling is conducted in accordance with the ORM in Appendix A before sampling commences."

(d) 29 CFR 1926.58(f)(5)(iii) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the qualifications listed in Appendix A. This notice shall be given prior to the start of the analyses."

(e) 29 CFR 1926.58(h)(3)(i) is amended to read: "Where respi-

ratory protection is used, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(f) 29 CFR 1926.58(j)(2)(I) is amended to read: "The decontamination area shall be separated from the regulated area by an air lock. Air locks shall be used to separate the clean room, shower area and equipment room. An "air lock" is an open area used to separate the clean room, shower room and equipment room from each other; and to separate the decontamination area from the work area. It is accessible through doorways protected by two overlapping polyethylene sheets."

(g) 29 CFR 1926.58(k)(I)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (k)(I)(i) of this section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(h) 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(i) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(j) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.

(k) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 54, Number 243, December 20, 1989, is incorporated by reference.

(l) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 55, Number 24, February 5, 1990, is incorporated by reference.

(m) Amendments, revisions and additions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(n) Amendments to 29 CFR 1926.58, "Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(7) 29 CFR 1926.59, "Hazard Communication," as published in Federal Register, August 24, 1987, Volume 52, Number 163, is incorporated by reference.

(8) Revisions to 29 CFR 1926.59, "Hazard Communication", as published in Federal Register, February 9, 1994, Volume 59, Number 27, are incorporated by reference.

(9) [~~(8)~~] Amendments to 29 CFR 1926.60, "Methylenedianiline," as published in the Federal Register, Volume 57, Number 154, August 10, 1992, are incorporated by reference.

(10) [~~(9)~~] Amendments to 29 CFR 1926.62, "Lead in Construction; Interim Final Rule", as published in the Federal Register, Volume 58, Number 84, May 4, 1993, are incorporated by reference.

(11) [~~(10)~~] Amendments to 29 CFR 1926.63, "Cadmium," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(12) Redesignation of 29 CFR 1926.63, "Cadmium", as published in the Federal Register, Volume 59, Number 1, January 3, 1994, is incorporated by reference.

(13) [~~(11)~~] Amendments to 29 CFR 1926.63, "Cadmium," as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.

(14) [~~(12)~~] 29 CFR 1926.64, "Process Safety Management for Highly Hazardous Chemicals", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(15) [~~(13)~~] 29 CFR 1926.65, "Hazardous Waste Operations and Emergency Response", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(16) [~~(14)~~] 29 CFR 1926.66, "Criteria for Design and Construction of Spray Booths", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort,. Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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 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: William L. Ralston, Kentucky Labor Cabinet. 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in construction work.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected by this amendment, as these revisions to the current rule are minor technical changes designed to clarify the existing regulations.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this amendment which will increase or decrease costs. There will be no affect on competition.

(b) Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this amendment.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed change.

(3) Assessment of anticipated effect on state and local revenues:

This amendment will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these revisions are simply minor technical changes to an existing regulation which clarify certain provisions.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of this amendment.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment adopts the revisions to the previously adopted regulations of 29 CFR 1926.63, "Cadmium," as published in the Federal Register, Volume 59, Number 1, January 3, 1994 and 29 CFR 1926.59, as published in the Federal Register, Volume 59, Number 27, February 9, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This adopted amendment is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment affects all local government entities that have employees working with hazardous substances and cadmium in construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who work with or are exposed to hazardous substances and cadmium while doing construction work.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this proposed amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:424. Adoption of 29 CFR Part 1926.1071-.1092.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.06 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1926.1071-.1092 revised as of June 20, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, Volume 58, Number 124. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: the redesignation of "Cadmium", to 29 CFR 1926.1127, as published in the Federal Register, Volume 59, Number 1, January 3, 1994 is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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 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: William L. Ralston, Kentucky Labor Cabinet. 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: These regulations affect all employers in the construction industry.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected by this regulation, as this is simply the renumbering of a regulation which has been previously enforced under a different standard number.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding these regulations which will increase or decrease costs. There will be no affect on competition.

(b) Reporting and paperwork requirements: These regulations will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these regulations.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these regulations.

(3) Assessment of anticipated effect on state and local revenues: These regulations will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these additions are simply the renumbering of regulations that have been previously enforced.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these regulations.

(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. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These additions adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These proposed regulations adopt regulations in 29 CFR Part 1926, as published in the Federal Register, Volume 59, Number 1, January 3, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed regulation is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This proposed regulation will impose no stricter, additional or different responsibilities than the federal standard.

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 regulation affect all local government entities that have employees do construction work involving cadmium exposure.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects safety and health of employees of local government who do construction work involving cadmium exposure.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this regulation is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This regulation will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:500. Adoption of 29 CFR Part 1915, 1917, 1918 and 1919, Maritime employment.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. The Occupational Safety and Health Standards Board hereby incorporates Chapter 29, Part 1915 as published in the April 20, 1983, Federal Register, Part 1917 as published in July 5, 1983, Federal Register, and Parts 1918 and 1919 of the Code of Federal Regulations, revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1915.1, 1918.1, and 1919.1 shall read as follows: "The provisions of this regulation adopt and extend the applicability of established Federal Maritime Standards contained in 29 CFR 1915, 1916, 1917, 1918, and 1919 to all Maritime employers, Maritime employees, and places of Maritime employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) The amendments to 29 CFR 1915, "Occupational Safety and Health Standards for Shipyard Employment", as published in the Federal Register, Volume 58, Number 125, July 1, 1993, are incorporated by reference.

(3) 29 CFR 1915.4(b) and 1918.3(b), "Secretary," means Secretary of Labor, Kentucky Labor Cabinet, Commonwealth of Kentucky, or his authorized representatives.

(4) 29 CFR 1919.2(D), "Assistant Secretary" is changed to read: "Secretary" means the Secretary of Labor, Kentucky Labor Cabinet, Commonwealth of Kentucky, or his authorized representative.

(5) 29 CFR 1915.97, "Health and Sanitation," is revised to read as follows: Revisions as published in the Federal Register, Volume 52, Number 163, August 24, 1987.

(6) 29 CFR 1915.99, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(7) The revisions to 29 CFR 1915.99, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(8) [~~(7)~~] Revision to 29 CFR 1915.113(b)(1), "Shackles and

Hooks," as published in the Federal Register, Volume 51, Number 188, September 29, 1986 is incorporated by reference.

(9) [~~(8)~~] Revision to 29 CFR 1915.172(d), "Portable Air Receivers and Other Unfired Pressure Vessels," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.

(10) [~~(9)~~] Amendments to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(11) [~~(10)~~] Amendments to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.

(12) Amendments to 29 CFR 1915.1927, "Cadmium", as published in the Federal Register, Volume 59, Number 1, January 3, 1994, are incorporated by reference.

(13) [~~(11)~~] 29 CFR 1917.1(a)(2)(x), "Marine Terminals," as published in the Federal Register, Volume Number 52, December 31, 1987, is incorporated by reference.

(14) [~~(12)~~] 29 CFR 1917.1(a)(2)(ix), "Scope and Applicability," as published in the Federal Register, Volume 52, Number 186, September 25, 1987 is incorporated by reference.

(15) [~~(13)~~] 29 CFR 1917.28, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(16) Revisions to 29 CFR 1917.28, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(17) [~~(14)~~] 29 CFR 1917.44(o), "General Rules Applicable to Vehicles," shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are incorporated by reference.

(18) [~~(15)~~] 29 CFR 1917.72, "Grain Elevators," (reserved) as published in the Federal Register, Volume Number 52, December 31, 1987, is removed.

(19) [~~(16)~~] 29 CFR 1918.90, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(20) Revisions to 29 CFR 1918.90, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(21) [~~(17)~~] 29 CFR 1919.2(e) "Administration" is changed to read: "Program" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.

(22) [~~(18)~~] An employer, required under 29 CFR 1915, 1918 or 1919 to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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 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: William L. Ralston, Kentucky Labor Cabinet. 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in shipyard employment.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected by these amendments, as these revisions to the current rule are minor technical changes designed to clarify the existing regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

(b) Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(3) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these revisions are simply minor technical changes to existing regulations which clarify certain provisions.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these amendments.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These amendments adopt the revisions to the previously adopted regulations of 29 CFR 1915.99, 29 CFR 1917.28, 29 CFR 1918.90, as published in the Federal Register, Volume 59, Number 27, February 9, 1994 and to 29 CFR 1915.1027, as published in the Federal Register, Volume 59, Number 1, January 3, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These adopted amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that have employees working with hazardous substances and those exposed to cadmium doing shipyard work .

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revisions affect safety and health of employees of local government who work with or are exposed to hazardous substances and those exposed to cadmium while involved in shipyard employment.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:600. Adoption of 29 CFR Part 1928.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of agriculture.

Section 1. The Occupational Safety and Health Standards Board hereby incorporates Chapter 29, Part 1928 of the Code of Federal Regulations revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions and deletions:

(1) 29 CFR 1928, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(2) 29 CFR Part 1928.1 shall read as follows: "This part contains Occupational Safety and Health Standards applicable to agriculture operations. The provisions of this regulation adopt and extend the applicability to established federal standards contained in 29 CFR Part 1928 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(3) The revisions to 29 CFR 1928.21, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994 are incorporated by reference.

(4) [~~(3)~~] 29 CFR "Field Sanitation," as published in the Federal Register, Volume Number 52, May 1, 1987, is incorporated by reference.

(5) [~~(4)~~] Amendments to 29 CFR 1928.1027, "Cadmium", as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Secretary
APPROVED BY AGENCY: June 14, 1994
FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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 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: William L. Ralston, Kentucky Labor Cabinet. 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected by this amendment, as these revisions to the current rule are minor technical changes designed to clarify the existing regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this amendment which will increase or decrease costs. There will be no affect on competition.

(b) Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this amendment.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed change.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these revisions are simply minor technical changes to an existing regulation which clarify certain provisions.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of this amendment.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment adopts the revisions to the previously adopted regulations of 29 CFR 1928.21, as published in the Federal Register, Volume 59, Number 27, February 9, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This adopted amendment is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment affects all local government entities that have employees working with hazardous substances while engaged in agricultural work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who work with or are exposed to hazardous substances while engaged in agricultural work.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will not affect the number of local government employees.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 35:015. Certification of electrical inspectors.

RELATES TO: KRS Chapter 227

STATUTORY AUTHORITY: KRS 13A.100 [12.080], 227.489[, 227.830]

NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.489 to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation is needed to establish the procedures for achieving and maintaining the certification. This amendment is necessary to specify the number of times an applicant may retake the examination for temporary certification and numerous other amendments for clarification. [bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.]

Section 1. Definitions. [The following words and terms, when used in this regulation shall have the meanings indicated:]

(1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Authority having jurisdiction" as used in the National Electrical Code means the Department of Housing, Buildings and Construction.

(3) "Certified electrical inspector" means any person who has met the criteria established by the commissioner, [has] satisfactorily passed the examination as required by this administrative regulation, and [has] received a certificate attesting thereto. The categories are:

(a) One (1) and two (2) family - persons who have passed the NCPCCI examination and persons classified as residential inspectors on the effective date of this administrative regulation. These inspectors shall be [are] deemed qualified to perform electrical inspections and approve electrical installations related to one (1) and two (2) family dwellings and mobile homes only.

(b) General - persons who have passed the NCPCCI examination of the same name and persons classified as commercial inspectors on the effective date of this administrative regulation. These inspectors shall be [are] deemed qualified to inspect and approve all types of residential, commercial, industrial and other properties which require electrical inspection.

(4) "Code" means the National Electrical Code (NEC) and any amendments [thereto which are] adopted by the department.

(5) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(6) "Department" means the Department of Housing, Buildings and Construction.

(7) "Electrical" means the installation of wires and conduits for the purpose of transmitting electricity[,] and the installation of related fixtures and equipment [in connection therewith].

(8) "Electrical industry" means those engaged in the generation, transmission and distribution of electricity and [,] the design, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.

(9) "Employee" means one who is employed on a full-time, part-time, or contractual basis.

(10) "Temporary certification" means a certificate issued by the department which is valid for a limited period of time. The department shall issue temporary certification to qualified persons under the conditions of Section 4 of this administrative regulation.

(11) "NCPCCI" means National Certification Program for Construction Code Inspectors and are examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence and professionalism in construc-

tion code enforcement.

Section 2. Applicability. This administrative regulation shall apply to all electrical inspectors in the Commonwealth of Kentucky[,] and to applicants for certification as electrical inspectors.

Section 3. Responsibilities of the Commissioner of the Department of Housing, Buildings and Construction. (1) The Commissioner of the Department of Housing shall require inspectors to be certified. Examinations shall be based on the edition of the National Electrical Code adopted in the Kentucky Building Code.

(2) The commissioner shall administer this administrative regulation, [and] provide for continuing education of certified electrical inspectors[,] and schedule examinations at regular intervals.

(3) It shall be the duty of the commissioner to investigate all complaints of alleged misconduct of any electrical inspector as certified under this administrative regulation if [when], in the opinion of the commissioner, there is sufficient evidence to suggest that misconduct exists.

Section 4. Applications Requirements for Temporary Certification. Prior to being examined by the department [commissioner] for "temporary certification" as an electrical inspector, [the] applicants shall comply with [meet] the following [requirements]:

(1) Applicants under [An applicant for temporary certification:] "one (1) and two (2) family dwelling" category shall meet the following requirements:

(a) An applicant shall [either] have [had] not less than five (5) years of [current] experience immediately preceding the application in the installation and[/or] design[,] of all types of residential wiring systems[,] installed in accordance with the National Electrical Code[,] or [he] shall be a registered professional electrical engineer[, and shall have been registered and] engaged in [the practice of] his profession for not less than three (3) years; and [.]

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties; and [.]

(c) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing [wherein] all pertinent personal information and experience [shall be stated]. Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting; and [.]

(d) Applications for temporary certification shall be accompanied by a written statement of need for certification from the local official responsible for the electrical or building inspection program; and [.]

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(2) [An] Applicants under [for temporary certification:] "general" category shall meet the following requirements:

(a) An applicant shall [either] have not less than five (5) years of [current] experience immediately preceding the application in the installation and/or design of all types residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code[;] or [he] shall be a registered professional electrical engineer[, and shall have been] engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties; and [.]

(c) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing [wherein] all pertinent personal information and experience [shall be stated]. Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting; and [.]

(d) Applications for temporary certification shall be accompanied by a written statement of need for certification from the local official responsible for the electrical or building inspection program; and [.]

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(3) [Any] Applicants shall receive credit earned for any electrical courses satisfactorily completed from any accredited vocational school or college on a year-for-year basis. Credit for education to replace applicant's experience requirements shall be limited to a total of two (2) years.

(4) The electrical advisory committee shall review all applicants for temporary certification to determine their eligibility to sit for the examination.

(5) Temporary certification shall expire at the end of eighteen (18) months from the time of initial certification and shall not be reissued [after that period of time has expired].

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the electrical advisory committee, the applicant shall pass the department's written examination for the class of temporary certification.

(2) Examinations for qualified applicants shall be administered within thirty (30) days after acceptance by the electrical advisory committee. Examinations required under this section shall be administered at the department's office in Frankfort, Kentucky, unless another location is specifically designated.

(3) Examinations shall be based on the edition of the National Electrical Code adopted in the Kentucky Building Code and the examination shall be open book.

(4) A grade of seventy (70) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to [shall, upon request,] be scheduled for the next examination date upon payment of an additional fee of ten (10) dollars.

(5) An applicant shall not be permitted to retake the examination more than three (3) times.

Section 6. Requirements for Full Certification as an Electrical Inspector: General and One (1) and Two (2) Family. (1) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties.

(2) The applicant shall [either] have had not less than five (5) years of [current] experience immediately preceding the application in the installation and/or design, of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code[;] or [he] shall be a registered professional electrical engineer[, and shall have been] engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required by this subsection, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through

other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to electrical construction practices is substantially [~~qualitatively~~] equivalent.

(3) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing [~~wherein~~] all pertinent personal information and experience [~~shall be stated~~]. Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting.

(4) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(5) The applicant shall provide proof of successful completion of the NCPCCI examination for electrical inspector general or the NCPCCI examination for electrical inspector one (1) and two (2) family.

(6) Following review and approval of the applicant's qualifications and examination results by the electrical advisory committee, the department shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 1(3) of this administrative regulation.

(7) Certificates issued pursuant to this section shall be valid [~~run~~] from July 1 to June 30.

(8) Fully certified inspectors shall, upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this administrative regulation. The "inactive" certificate shall be converted to "active" in order to be authorized to make electrical inspections.

(9) All certified electrical inspectors holding a valid certification under previous law shall be exempt from the testing requirements of this administrative regulation.

Section 7. Renewals of "General" and "One (1) and Two (2) Family" Certificates. (1) Certification shall be issued to individuals and shall not be issued to corporations, partnerships, companies or any other entities.

(2) All electrical inspector certifications, except temporary certificates, shall expire on June 30 every year. The department shall mail [~~to~~] each certified inspector, prior to the date of expiration, a renewal application form and the certification shall be renewed subject to the terms and conditions of this administrative regulation.

(3) A renewal fee in the sum of twenty-five (25) dollars shall be paid by each certified electrical inspector. The fee shall be paid before June 30 in each succeeding year in order to maintain certification.

Section 8. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program each year. These programs shall be acceptable only if approved by the electrical advisory committee.

(2) All electrical inspections shall be made in compliance with the edition of the National Electrical Code, set forth in the Kentucky Building Code (815 KAR 7:090 [~~7:025~~]).

(3) In addition to the National Electrical Code, the electrical inspector shall familiarize himself with the applicable building codes or fire safety codes governing buildings in the area where he[~~/she~~] performs inspections[~~,~~] to the extent that it is necessary to determine the occupancy load of a facility.

(4) The electrical inspector shall make a rough-in and final inspection and other inspections as may be necessary to approve the system [~~minimum of two (2) inspections~~].

(a) Upon completion of the [~~When an inspector makes a~~] rough-in inspection, the inspector [~~he/she~~] shall attach a red sticker with his[~~/her~~] signature and certification number on the main service equipment or at some other appropriate location.

(b) Upon final approval of an electrical installation, the inspector [~~When an inspector approves a final inspection, he/she~~] shall attach a green sticker to the main service equipment with his signature and certification number, name of the project and location, stating that the system is in compliance with the National Electrical Code. The inspector shall also provide the owner or the owner's agent with a certificate of compliance.

(c) Temporary approvals issued by the inspector shall not authorize occupancy of the facility. The sticker issued for temporary approval shall be yellow.

(5) Red, yellow and green [~~All~~] stickers and certificates of compliance to be used by the electrical inspector shall be issued or approved by the department.

(6) Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection. These records shall contain, as a minimum, the following information:

(a) Sufficient information to identify the location of the structure inspected;

(b) The date of the inspection;

(c) The type of structure, whether residential, commercial, industrial or other;

(d) The designation of any required permits and the agency[~~(s)~~] granting the permit;

(e) [~~same,~~] The size and complexity of the structure;

(f) [~~, and~~] Deficiencies in meeting code requirements and any action required to comply; and

(g) Any other pertinent information considered necessary to allow for a review of the inspection.

(7) These records shall be available for examination by any authorized representative of the department upon request.

Section 9. Complaints and Grievance[s] Procedures. (1) A [~~Any~~] person who believes that any act or omission of an [~~any~~] electrical inspector certified by the department [~~commissioner~~] has caused [~~worked~~] an undue hardship on him as a result of the alleged misconduct in the performance of his[~~/her~~] duties, shall file a complaint against the inspector.

(2) All complaints or allegations of misconduct shall be submitted in writing to the commissioner; [~~, and~~] shall include the nature of the alleged misconduct, with specific details as to acts, names, dates and witnesses; and shall specify the action requested of [~~desired on the part of~~] the commissioner.

(3) Following an [~~After any~~] investigation, the commissioner may, at his discretion, cause the matter to be heard and a recommendation rendered by the electrical advisory committee; [~~,~~] or, he may set the matter for public hearing or take any other appropriate action to resolve or correct the matter.

Section 10. Suspension and Revocation of Certification. The commissioner shall revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner[~~,~~] after a departmental hearing, to have:

(1) Engaged as an electrical contractor, worked as an electrician or engaged in any other activity in the electrical industry or has pecuniary or associational interests [~~therein~~] which constitutes a conflict of interest; or [~~.~~]

(2) Engaged in fraud, deceit or misrepresentation in obtaining certification; or [~~.~~]

(3) Been guilty of negligence, incompetence[~~,~~ or misconduct[~~,~~] as set forth by this administrative regulation[~~,~~] in the field of electrical inspection; or [~~.~~]

(4) Affixed or caused to be affixed a seal of approval of issuing certificates of approval for any electrical installation subject to his[~~/her~~] inspection when he[~~/she~~] has not personally inspected the installation and found it to be satisfactory in accordance with the code; or [~~.~~]

(5) Operated as an electrical inspector in any locality where a

court of competent jurisdiction has adjudged him to be in conflict with state or local laws, ordinances, or regulations; or [.]

(6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the original inspector; or [.]

(7) Maintained inaccurate or inadequate recordkeeping as required by Section 8 of this administrative regulation.

Section 11. Electrical Inspections by State Employed Certified Electrical Inspectors. (1) All state-owned property including all buildings being constructed by the state under the authority of the [Department of] Finance and Administration Cabinet shall be inspected by a certified electrical inspector who is an employee of the state [Department of Housing, Buildings and Construction].

(2) State employed certified electrical inspectors shall also inspect, for a fee, if [wherever] a certified electrical inspector has not been made available by the local government.

(3) State employed certified electrical inspectors shall assert jurisdiction for the electrical inspection of any project subject to state plan review under the Kentucky Building Code.

(4) State employed certified electrical inspectors may inspect state leased facilities, upon request.

Section 12. Interpretations. If [Where] any provision of the National Electrical Code can be shown to be [clearly] unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual [any person] may request to appear before the electrical advisory committee of the Department of Housing, Buildings and Construction to request a variance from the code. Upon [After] advice from the committee, the department shall render its decision in the matter and the [said] decision shall be appealable to the Board of Housing, Buildings and Construction where appropriate.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: May 31, 1994
FILED WITH LRC: June 3, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: State certified electrical inspectors.

(a) Direct and indirect costs or savings to those affected: There will be neither cost nor savings associated with this amendment.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: This amendment will create no reports nor paperwork for the inspector.

(2) Effects on the promulgating administrative body: This amendment will create no additional responsibilities for this agency.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: This amendment is not anticipated to impact state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered nor rejected.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Requirements for full certification are more stringent, while emergency conditions allow for a short-term alternative testing and experience to assist local governments.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Epidemiology
(Proposed Amendment)

902 KAR 2:020. Reportable diseases.

RELATES TO: KRS 211.180, 214.010, 333.130
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 211.180 mandates the Cabinet for Human Resources to implement a statewide program for the detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other [such] diseases and health hazards as may be controlled. This administrative regulation is being promulgated [in order] to achieve uniform reporting of selected diseases.

Section 1. Reportable Diseases. Time of Reporting. Because of their public health significance, the following diseases and occurrences are [hereby] declared to be reportable within the time period specified below. All cases shall be reported.

(1) Diseases to be reported within twenty-four (24) hours. The following diseases and occurrences shall be reported individually within twenty-four (24) hours of arriving at a probable diagnosis:

(a) Animal bites;
(b) Anthrax;
(c) Botulism (other than infant);
(d) Campylobacteriosis;
(e) Cholera;
(f) Diphtheria;
(g) Escherichia coli 0157-H7;
(h) Encephalitis;
(i) Gonococcal infections (all suspected or confirmed antibiotic-resistant strains);
(j) Hepatitis (viral);
(k) Measles (rubeola);

(l) Meningitis and other invasive disease caused by Haemophilus influenza type b;
(m) Meningitis caused by Neisseria meningitidis;
(n) Meningococcemia;
(o) Pertussis (whooping cough);
(p) Plague;
(q) Poliomyelitis;
(r) Rabies (human);
(s) Rubella (including congenital rubella syndrome);
(t) Salmonellosis;
(u) Shigellosis;
(v) Syphilis (primary, secondary, congenital, and other infections suspected to be under one (1) year's duration);
(w) Trichinosis;
(x) Tuberculosis;
(y) Typhoid fever;
(z) Yellow fever;
(aa) Yersiniosis; [~~and~~]
(bb) A suspected epidemic of any disease; and
(cc) Positive tuberculin skin tests in children six (6) years of age and under.

(2) Diseases to be reported within seven (7) days. The following diseases shall be reported individually within seven (7) days of diagnosis:
(a) AIDS (acquired immunodeficiency [~~immune deficiency~~] syndrome);
(b) Amebiasis;
(c) Botulism (in an infant);
(d) Brucellosis;
(e) Chancroid;
(f) Chlamydia infections;
(g) Cryptococcosis;
(h) Ehrlichiosis (human);
(i) Giardiasis;
(j) Gonococcal infections (other than antibiotic-resistant strains);
(k) Granuloma inguinale;
(l) Herpes simplex infections (genital);
(m) Histoplasmosis;
(n) Human immunodeficiency virus (HIV) infections;
(o) Kaposi's Sarcoma;
(p) Kawasaki's disease;
(q) Lead poisoning;
(r) Legionellosis;
(s) Leprosy;
(t) Lleptospirosis;
(u) Lyme disease;
(v) Lymphogranuloma venereum;
(w) Malaria;
(x) Meningitis (caused by any organism other than N. meningitidis or H. influenza);
(y) Mumps;
(z) Mycobacterium avium complex;
(aa) Pneumocystis [~~Pneumocystis~~] carinii pneumonia;
(bb) Psittacosis;
(cc) Q fever;
(dd) Reye's syndrome;
(ee) Rocky Mountain spotted fever, syphilis (all stages other than those in subsection (1) of this section);
(ff) Tetanus;
(gg) Toxic shock syndrome;
(hh) Toxoplasmosis;
(ii) Tularemia; and
(jj) Typhus.

(3) Diseases to be reported collectively, on a weekly basis: chicken pox.

(4) Diseases to be reported within three (3) months of diagnosis. The following diseases shall be reported individually within three (3) months of diagnosis:
(a) Asbestosis;
(b) Coal worker's pneumoconiosis;
(c) Mesothelioma; and
(d) Silicosis.

Section 2. Reporting of Diseases. (1) Physicians. All physicians in active practice within the State of Kentucky shall report to the local health department of the county in which they practice, or to the Department for Health Services, any disease listed as reportable in Section 1 of this administrative regulation.

(2) Hospitals. The person in charge of any licensed hospital in Kentucky shall ensure that any hospitalized patient with any of the diseases listed in Section 1 of this administrative regulation shall be reported to the local health department of the county in which the hospital is located or to the Department for Health Services.

(3) Laboratories. The person in charge of any laboratory licensed in the state of Kentucky shall report to the local health department of the county in which the laboratory is located or to the Department for Health Services, any positive microbiologic or serologic test which indicates the presence of infection with an organism associated with any of the reportable diseases in Section 1 of this administrative regulation. These reports shall be made within the time frame for the corresponding disease as in Section 1 of this administrative regulation.

(4) Information required in report. Except for diseases listed in Section 1(3) of this administrative regulation and human immunodeficiency virus (HIV), all reports shall contain the name and address of the patient as well as pertinent clinical, laboratory, and epidemiological information. Reports of human immunodeficiency virus (HIV) shall be identified by a code (such as soundex plus birth date, or initials plus birth date). The code shall always be the same for a given patient but, in and of itself, shall not identify the patient. All reports shall include birthdate, sex, race, and county of residence. Reports of AIDS (acquired immunodeficiency [~~immune deficiency~~] syndrome) and human immunodeficiency virus (HIV) infections shall include the following risk factors, if known:
(a) Male to [~~Homosexual~~] male sexual contact;
(b) History of injecting [~~intravenous~~] drug use;
(c) Hemophilia;
(d) Receipt of blood products;
(e) Heterosexual contact with paragraphs (a) through (d) of this subsection; and
(f) Birth to an infected mother.

(5) Reporting of communicable diseases in animals. It shall be the duty of every person having knowledge of the existence of an animal of any species apparently afflicted with rabies, anthrax, eastern or western equine encephalitis, leptospirosis, brucellosis, tuberculosis, psittacosis, or other disease known to be communicable to man to report the pertinent information within twenty-four (24) hours to the local health department in the county in which the animal is located.

Section 3. Transmission of Reports to the Department for Health Services. Case reports described in Sections 1 and 2 of this administrative regulation shall be transmitted from local health departments to the Department for Health Services within three (3) days of receipt, or sooner if an epidemic is suspected or assistance is needed. If [~~Where~~] there is no local health department or if [~~when~~] for any reason the local health department is unable to receive or forward any report of a reportable disease, the report shall be submitted directly to the Department for Health Services.

RICE C. LEACH, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: May 24, 1994
FILED WITH LRC: June 15, 1994 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been

scheduled for July 21, 1994, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by July 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: R. Finger, M.D.

(1) Type and number of entities affected: All hospitals, physicians, and clinical laboratories who are mandated to report diseases.

(a) Direct and indirect costs or savings to those affected: No one provider would be impacted by this change, since fewer than 100 reports are expected in a year.

1. First year:

2. Continuing costs or savings: See (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The number of expected reports is so minimal that it will not increase or decrease cost.

(2) Effects on the promulgating administrative body: This will allow the department to monitor occurrence of this human pathogen.

(a) Direct and indirect costs or savings: The cost associated would be in the event of an outbreak. However, prevention and control of this illness could result in great health care cost savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minimal

(3) Assessment of anticipated effect on state and local revenues: None is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method exists to require uniform reporting of diseases.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None are known to be in conflict, etc.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable (5)(a).

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable (5)(a).

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The regulated entities are affected equally and are currently providing reports for other diseases.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. Only local health departments.

3. State the aspect or service of local government to which this administrative regulation relates. Continue reporting of diseases as is currently done.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No effect.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:270. Maximum weekly benefit rates.

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 194.050, 341.380

NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1994 [~~1993~~], and prior to July 1, 1995 [~~1994~~]. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1993 [~~1992~~] was 17,399,143 [~~16,834,645~~];

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,449,929 [~~1,402,879~~];

(3) The "total wages" reported by subject employers for the calendar year of 1993 [~~1992~~] was $31,764,500,460 [~~30,342,989,530;~~]

(4) The "average weekly wage" for the calendar year of 1993 [~~1992~~] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was $421.30 [~~415.94~~];

(5) Fifty-five (55) percent of the average weekly wage of $421.30 [~~415.94~~] for the calendar year of 1993 [~~1992~~] was $231.72 [~~228.77~~].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1994 [~~1993~~], and prior to the first day of July, 1995 [~~1994~~], is determined to be $232 [~~229~~].

TREVA B. WRIGHT-DONNELL, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: June 6, 1994

FILED WITH LRC: June 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1994, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by July 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Treva B. Wright-Donnell

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: All eligible UI recipients for the year 7-1-94 through 6-30-95.

2. Continuing costs or savings: An estimated additional $1.96M paid to eligible UI recipients.

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: An additional $1.96M paid from the Unemployment Insurance Trust Fund to UI recipients.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: The number of people filing UI claims may increase or decrease.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available in accordance with statutory requirements

(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: This regulation satisfies the statutory requirements of KRS 341.380(3), which mandates that the secretary determines the maximum weekly rate prior to July 1 of each year.

TIERING: Is tiering applied? No. All claimants treated equally.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:017. Job opportunities and basic skills (JOBS) child care and supportive services.

RELATES TO: KRS 205.200(2), 205.211, 45 CFR 250.0, 250.1, 250.11, 250.12, 250.48, 255.0, 255.2, 255.3, 255.4, 255.5, 255.6

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the requirements for receiving job opportunities and basic skills (JOBS) child care and supportive services.

Section 1. Definitions. (1) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

(2) "Center-based child care" means full- or part-time licensed care, day or night, provided for seven (7) or more unrelated children.

(3) "Certified child care" means child care which is provided in a private home, day or night, for six (6) or fewer unrelated children and the provider is registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:100.

(4) "Combination programs" means any educational program which includes as its basis literacy, ABE or GED. This program shall also include life skills, skills training or job readiness training.

(5) "Component" means services and activities such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, alternative work experience program, other work experience program or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) Program. Each individual component is described in 904 KAR 2:370.

(6) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for removal of barriers takes place.

(7) "Family child care" means care provided for no more than three (3) unrelated children. These homes are unregulated and exclude group home child care providers that may be voluntary certified.

(8) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(9) "Group home child care" means child care homes which are mandatorily certified to provide care for four (4) to six (6) unrelated children or voluntarily certified to care for three (3) or fewer unrelated children. Mandatory and voluntary certified providers are subject to the health and safety requirements of 905 KAR 2:100.

(10) "In-home child care" means care provided to a child in his or her own home.

(11) "Licensed child care providers" means day care facilities which provide care for seven (7) or more unrelated children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:090.

(12) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(13) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(14) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(15) "Recoupment" means recovery of overpayments of child care.

(16) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:370.

(17) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

(18) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

Section 2. Payment Entitlement. (1) With the exception of payments described in Sections 8 and 12 of this administrative regulation those individuals participating in the JOBS Program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

(c) Other supportive services costs necessary for participation in an approved JOBS activity, as described in Section 12 of this administrative regulation.

(2) JOBS activities are described in 904 KAR 2:370.

Section 3. Child Care Eligibility in JOBS Components. (1) Child care shall be paid for a child meeting the following criteria:

(a) The child is under thirteen (13); or

(b) A dependent child who is physically or mentally incapable of caring for himself, as verified by the written determination of:

1. A physician; or

2. A licensed or certified psychologist; or

(c) A needy dependent child under court supervision; or

(d) Would be a dependent child except for the receipt of benefits

under supplemental security income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(2) Child care shall be provided in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment; or

(e) On-the-job training (OJT) participants discontinued from AFDC, until the end of the component placement.

Section 4. Child Care Eligibility in Self-initiated Activities. (1) Child care shall be provided in the same situations as in JOBS components with the following exceptions:

(a) Discontinued OJT participants;

(b) Component preparation; and

(c) Precomponent, for persons waiting to enter self-initiated activities for the first time.

(2) Child care shall be provided only for approved self-initiated activities.

Section 5. Child Care Limitations. (1) Child care payments shall:

(a) Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates for components which do not provide earned income.

(b) Be allowed as a deduction as outlined in administrative regulation 904 KAR 2:016 for any component yielding earned income.

(2) Payments shall not be made to a provider if the provider is:

(a) The parent or stepparent;

(b) The legal guardian;

(c) A member of the AFDC assistance unit which includes the child needing care;

(d) Not meeting applicable standards of state and local law; or

(e) Not allowing parental access.

(3) Local market rates shall be determined by:

(a) The type of provider;

(b) The age of the child;

(c) The special needs of the child. Special needs shall be verified by:

1. Entitlement to disability benefits; or

2. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

(d) The amount of time care is needed; and

(e) The geographical boundaries of the fifteen (15) area development districts.

(4) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.

(5) FT and PT maximum payment levels shall be established for the following groups of dependent children:

(a) "Special needs" includes children in no certain age group;

(b) "Infants" includes children under age one (1);

(c) "Toddlers" includes children from age one (1) up to age three (3);

(d) "Preschool" includes children from age three (3) up to age six (6);

(e) "School age" includes children age six (6) and over.

(6) For needs incurred on or after April 1, 1992, child care maximum payments shall be made as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	12	9	12	9	12	9
Group Home	$11	11	11	8	11	8	11	8	11	8
Family/ In-Home	$10	10	10	7	10	7	10	7	10	7

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	10	7	10	7	10	7
Group Home	$10	10	10	7	9	6	9	6	9	6
Family/ In-Home	$9	9	9	6	8	5	8	5	8	5

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	13	10	13	10	13	10
Group Home	$12	12	12	9	12	9	12	9	12	9
Family/ In-Home	$11	11	11	8	11	8	11	8	11	8

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	11	8	11	8	11	8
Group Home	$12	12	12	9	10	7	10	7	10	7
Family/ In-Home	$11	11	11	8	9	6	9	6	9	6

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	10	7	10	7	10	7
Group Home	$10	10	10	7	9	6	9	6	9	6
Family/ In-Home	$9	9	9	6	8	5	8	5	8	5

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$15	15	15	12	15	12	14	11	12	9
Group Home	$14	14	14	11	14	11	13	10	11	8
Family/ In-Home	$13	13	13	10	13	10	12	9	10	7

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$16	16	16	13	14	11	14	11	13	10
Group Home	$15	15	15	12	13	10	13	10	12	9
Family/ In-Home	$14	14	14	11	12	9	12	9	11	8

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	11	8	9	6	9	6
Group Home	$11	11	11	8	10	7	8	5	8	5
Family/ In-Home	$10	10	10	7	9	6	7	4	7	4

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	9	6	9	6	9	6	9	6
Group Home	$10	10	8	5	8	5	8	5	8	5
Family/ In-Home	$9	9	7	4	7	4	7	4	7	4

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$14	14	14	11	13	10	13	10	13	10
Group Home	$13	13	13	10	12	9	12	9	12	9
Family/ In-Home	$12	12	12	9	11	8	11	8	11	8

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	12	9	12	9	12	9
Group Home	$11	11	11	8	11	8	11	8	11	8
Family/ In-home	$10	10	10	7	10	7	10	7	10	7

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	13	10	11	8	11	8
Group Home	$12	12	12	9	12	9	10	7	10	7
Family/ In-Home	$11	11	11	8	11	8	9	6	9	6

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	11	8	11	8	11	8
Group Home	$10	10	10	7	10	7	10	7	10	7
Family/ In-Home	$9	9	9	6	9	6	9	6	9	6

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	10	7	10	7	10	7	10	7
Group Home	$10	10	9	6	9	6	9	6	9	6
Family/ In-Home	$9	9	8	5	8	5	8	5	8	5

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$14	14	14	11	13	10	13	10	13	10
Group Home	$13	13	13	10	12	9	12	9	12	9
Family/ In-Home	$12	12	12	9	11	8	11	8	11	8

(7) Child care payments shall be limited as follows:

(a) Six (6) semesters (three (3) years) for a two (2) year postsecondary program;

(b) Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program with an additional semester when:

1. If only one (1) additional semester is needed to complete the degree requirements; and

2. If satisfactory progress is being made; [or]

(c) No restrictions on other education and training activities.

(8) These limits apply to both full-time and part-time enrollment.

(9) In preemployment or precomponent, if necessary to guarantee that the child care arrangement shall not be lost, child care payments shall be provided for a period of:

(a) Up to two (2) weeks prior to the scheduled start of employment or component activity; and

(b) Up to one (1) month during a break in employment or component activity if subsequent employment or component activity is scheduled to begin within that period.

(10) Child care payments shall not be made if:

(a) If only one (1) [An AFDC UP qualifying] parent is participating; and

(b) The nonparticipating parent is not incapacitated.

(c) The nonparticipating parent is employed and child care is allowed as a deduction as outlined in administrative regulation 904 KAR 2:016.

(11) When child care expenses are paid from another source the agency shall pay:

(a) Only the difference between the total child care and what the other source is paying; and

(b) Up to the maximum daily payment rate per child per provider.

Section 6. Authorization of Child Care Payment. (1) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(2) Departmental forms required for verification are incorporated by reference in this administrative regulation.

(3) Payments shall be authorized in accordance with 904 KAR 2:050.

Section 7. Restrictions on Authorization of Child Care Payments. Payment shall not be made if:

(1) Verification is not returned by the end of the month following the month in which the cost was incurred;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 8. Transportation Payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation;

(3) Component participation, with the exception of OJT while the AFDC case remains active;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from AFDC, until the end of the component placement.

Section 9. Transportation Payments in Self-initiated Activities. (1) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

(a) Transitional extension;

(b) OJT participants discontinued due to increased earnings or hours of employment;

(c) Component preparation; and

(d) Precomponent, for persons waiting to enter self-initiated activities for the first time.

(2) Reimbursement shall be paid only for approved self-initiated activities.

Section 10. Transportation Payment Amount and Authorization. (1) A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.

(2) Transportation reimbursement shall be made after receipt of appropriate verification through departmental forms or through the JOBS automated system. Payments shall be made as specified in 904 KAR 2:050.

(3) Transportation payments shall be limited in the same manner as child care payments, as described in Section 5 [6](7) of this administrative regulation.

(4) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, transportation payments shall be provided for the period of:

(a) Up to two (2) weeks prior to the scheduled start of component activity; and

(b) Up to one (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 11. Restrictions on Authorization of Transportation Payments. Payments shall not be made if:

(1) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 12. Other Supportive Services in JOBS Components. (1) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

(a) Component preparation;

(b) Component participation, except for expenses included in the work expense standard deduction for participants in OJT while the AFDC case remains active;

(c) Transitional extension; or

(d) OJT participants discontinued from AFDC, until the end of the component placement.

(2) These services shall be approved by the case manager as defined in 904 KAR 2:370.

(3) Items and services that shall be approved are the purchase of:

(a) Remedial health care items or services not covered under the Medicaid Program;

(b) Uniforms required by education or training provider;

(c) Suitable clothing for a job interview;

(d) School supplies other than books;

(e) Fees to obtain a license;

(f) Timepieces that are necessary for training;

(g) The cost to have a photo identification made in order to take a GED test;

(h) The cost of a criminal records check fee if the provider requires verification; or

(i) Driver's education.

Section 13. Other Supportive Services in Approved Self-initiated Activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

(1) Transitional extension;

(2) Discontinued OJT participants; or

(3) Component preparation.

Section 14. Limitations on Other Supportive Services. (1) A cumulative limit of $300 in a twelve (12) month period, beginning with the first day of the month in which the first supportive service payment is made, shall be in effect for any participant in these approved JOBS activities:

(a) Component preparation;

(b) Component-related;

(c) Transitional extension; or

(d) Discontinued OJT participants.

(2) Other supportive services shall be limited in the same manner as child care payments, as described in Section 5(7) of this administrative regulation.

Section 15. Restrictions on Authorization of Supportive Service Payments. Payments shall not be made for the period during which:

(1) Verification is not returned by the service provider;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 16. Child Care Recoupment. The following provisions apply to JOBS child care supportive service overpayments:

(1) Necessary action shall be taken promptly by the department to correct and recoup any overpayments occurring on or after October 1, 1990 in a case:

(a) Of fraud;

(b) Involving a current recipient; and

(c) In which the overpayment would equal or exceed the cost of recovery.

(2) An overpayment shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction in child care payments; or

(c) Reduction of AFDC benefits only upon a voluntary request of the recipient family.

(3) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.

(4) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.

Section 17. Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive services payments in the JOBS program are incorporated effective December 1, 1993. These forms include:

(a) PA-32, revised 1/93;

(b) PA-33, revised 3/94 [~~7/93~~];

(c) PA-33N, revised 3/94;

(d) [~~(c)~~] PA-33.1, revised 6/91;

(e) [~~(d)~~] PA-114, revised 1/93; and

(f) [~~(e)~~] PA-416, revised 1/93.

(2) 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.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: May 23, 1994

FILED WITH LRC: June 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 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: We determined that 2,100 AFDC recipients are placed into a four year college program in a year. These recipients are either participating in the JOBS program or are self-initiated. Approximately 15% of those recipients would be affected by the change in this amendment. As of March 1994, total expenditures for individuals in the four year college component was $133,163.27 with 350 participants. This figures out to an average individual payment of $380.46. Based on 15%, we believe that 315 individuals would possibly receive additional supportive services.

(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: No more than is currently required for verification purposes.

(2) Effects on the promulgating administrative body: None other than an additional cost.

(a) Direct and indirect costs or savings: Based on the figures shown under entities affected, we believe an additional cost of $599,224.50 per year would be incurred. This is figured from 315 participants, which is 15% of the total 2,100 times the average monthly payment of $380.46, times 5 to determine a yearly figure.

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No more than is currently required.

(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. 45 CFR 255.2

2. State compliance standards. Same as above.

3. Minimum or uniform standards contained in the federal mandate. States may provide, pay for, or reimburse transportation and other work related expenses (including work-related supportive services) which it determines are necessary to enable a recipient to participate in approved JOBS activities under 45 CFR 250, including self-initiated education or training pursuant to 45 CFR 250.48.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:040. Procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.200(2), 205.245, [~~20 CFR 416.905, 416.931, 42 CFR 435.530, 435.540, 435.916,~~] 45 CFR 206.10(a)(2)(ii), 206.10(a)(9)(iii), 206.10(a)(9)(iv) [~~233.90(c)(1)(iv)~~]

STATUTORY AUTHORITY: KRS 13A.120, 194.050, 205.200

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall [~~has the responsibility under the provisions of KRS Chapter 205 to~~] administer the following public assistance programs: Aid to Families with Dependent Children (AFDC)[~~; Medical Assistance (MA);~~] and State Supplementation Program (SSP). This administrative regulation sets forth the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) Eligibility shall be determined prospectively. To receive or continue to receive assistance, a household shall meet all of the eligibility criteria for the month payment is intended to cover.

(2) Each decision regarding eligibility or ineligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.

(a) The applicant or recipient shall be the primary source of information and shall be required to:

1. Furnish verification of:

(a) Income;

(b) Resources; and

(c) Technical eligibility; and

2. Give written consent to those contacts necessary to verify or clarify any factor pertinent to the decision of eligibility.

(b) When informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information at the time requested shall be considered a failure by the applicant or recipient to present adequate proof of eligibility.

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting within ten (10) days any change in circumstances which may affect eligibility or the amount of payment.

(2) [~~In addition,~~] Eligibility shall be [~~reconsidered or~~] redetermined:

(a) [~~(1)~~] When a report is received or information is obtained about changes in circumstances;

(b) [~~(2)~~] At least every twelve (12) months for [~~MA cases, and~~] SSP cases in which Supplemental Security Income (SSI) is not received; and

(c) Except for cases identified in the alternate redetermination plan, [~~(3)~~] at least every six (6) months for AFDC cases; and

(d) At least every twelve (12) months for AFDC cases identified in the alternate redetermination plan.

(3) An AFDC case shall be identified in the alternate redetermination plan if:

(a) The case is not based on a deprivation of unemployment of one (1) of the parents, as specified in 904 KAR 2:006, Section 9; and

(b) The case does not include a recipient who has earned income; or

(c) The application of exclusions and deductions from income, set forth in 904 KAR 2:016, Section 4, permit the case to qualify for the maximum payment for the household size, as specified in 904 KAR 2:016, Section 7; and

(d) At least one (1) of the following conditions shall be met:

1. The household contains a recipient of Supplemental Security Income (SSI) benefits;

2. The case has been active for three (3) or more years; or

3. The case does not contain an adult member. However, if the household contains an otherwise eligible adult who was excluded from the case for failure to comply with a technical requirement, as specified in 904 KAR 2:006 or 904 KAR 2:370, the agency may retain the case in the standard six (6) month redetermination schedule.

[~~Section 3. Determination of Incapacity or Permanent and Total Disability. (1) A determination that a parent with whom the needy child lives is incapacitated, or that the individual requesting medical assistance due to disability is both permanently and totally disabled, shall be made by a medical review team following review of both medical and social reports except as listed in subsection (2) or (3) of this section.~~

~~(2) A parent shall be considered incapacitated without a determination from the medical review team if:~~

~~(a) The parent declares physical inability to work;~~

~~(b) The worker observes some physical or mental limitation; and~~

~~(c) The parent:~~

~~1. Is receiving SSI; or~~

~~2. Is age sixty five (65) or over; or~~

~~3. Has been determined to meet the definition of blindness as contained in 42 USC 1382c or 42 USC 416 by the Social Security Administration; or~~

~~4. Has been determined to meet the definition of permanent and total disability as contained in 42 USC 1382c or 42 USC 416 by either the Social Security Administration or the Medical Review Team of the Department for Social Insurance; or~~

~~5. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or~~

~~6. Is receiving RSDI, federal black lung benefits or railroad retirement benefits based on disability as evidenced by an award letter; or~~

~~7. Is receiving Veterans Administration (VA) based on 100% disability, as verified by an award letter; or~~

~~8. Is currently hospitalized and a statement from the attending physician indicated that incapacity will continue for at least thirty (30) days. If application was made prior to admission, the physician is also requested to indicate if incapacity existed as of application date.~~

~~(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:~~

~~(a) Receives RSDI or railroad retirement benefits based on disability; or~~

~~(b) Received SSI based on disability during any portion of the twelve (12) months preceding the application and discontinuance was due to income or resources, not to improvement in physical condition; or~~

~~(c) Has been determined to meet the definition of permanent and total disability as contained in 42 USC 416 or 42 USC 1382c by the Social Security Administration; or~~

~~(d) Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition.~~

~~(4) The determination that a parent is not incapacitated or not disabled shall not be made by the local office field staff.~~]

Section 3. [~~4.~~] Reviews of SSP Cases. (1) SSP cases containing SSI income shall be [~~periodically~~] reviewed every six (6) months to:

(a) Determine that the special need for which supplementation is granted continues to exist;

(b) Verify living situation and income; and

(c) Adjust the SSP payment, if appropriate.

(2) SSP cases not containing SSI income shall be reviewed six

(6) months following the yearly redetermination to:
(a) Review all items subject to change; and
(b) Adjust the SSP payment, if appropriate.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 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: a) Approximately 1/3 of the basic AFDC cases, or approximately 24,500 cases, are expected to be identified in the alternate redetermination plan and will have their reinvestigation interval adjusted to a 12 month cycle instead of the normal 6 month period. All AFDC cases based on an unemployed parent will continue to have the 6 month reinvestigation cycle and are not affected. b) Approximately 6,300 recipients currently receive State Supplementation benefits.

(a) Direct and indirect cost or savings to those affected:

1. First year: a) The affected AFDC cases will be placed in a 12 month cycle following the next scheduled 6 month reinvestigation. A change from a 6 month to a 12 month reinvestigation period will spare the recipients the burden and expense of appearing every 6 months at the local Department for Social Insurance Office. Costs for transportation to the office for the face-to-face interview will be saved for the affected AFDC recipients. During the interval between the twelve month reinvestigations the client will continue to be required to report changes; however, the recipients targeted for 12 month redetermination are in nonerror prone groups who usually have minimal changes to report. The recipient may report changes by mail or phone, not usually requiring a trip to the local Department for Social Insurance office. First year savings are estimated to be $73,500. b) The changes as a result of clarifying requirements for State Supplementation case reviews will have no fiscal impact to recipients. This is clarification of existing policy. These case reviews are conducted by the caseworker, usually requiring minimal or no effort by the recipient. c) The removal of information regarding determination of incapacity or permanent and total disability will have no fiscal impact since appropriate information is transferred to 904 KAR 2:006. d) The removal of all Medicaid content from this regulation will have no fiscal impact since this information is transferred to regulations promulgated by the Department for Medicaid Services.

2. Continuing cost or savings: Same as first year.

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: 1) Reporting and paperwork requirements for affected AFDC households are reduced due to the completion of a redetermination application form every 12 months instead of every 6 months. 2) The change regarding case reviews for State Supplementation cases will have no impact.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: a) The change from a 6 month to a 12 month redetermination period for cases identified in the alternate redetermination plan will reduce case maintenance actions on cases which are low error prone cases. Staff time saved on cases with a 12 month reinvestigation will be redirected to cases where additional effort will have the greatest effect on reducing total caseload error rates. These types of cases will continue to maintain the existing 6 month redetermination cycle. There is no fiscal impact to staff time since time saved on cases due 12 month reinvestigation will be redirected to more error prone cases. The risk of increased error rates associated with extending the redetermination cycle on affected cases from 6 to 12 months is considered to be minimal. There is no direct fiscal impact to AFDC benefits; however, implementation of an alternate redetermination plan may maintain our ability to continuously remain below federal tolerance levels for AFDC error rates utilizing existing staff for current caseloads. The amount saved for postage and printing costs for applications, worksheets, and other forms used in the redetermination process, as a result of changing from a 6 month to a 12 month cycle for affected cases, is $27,440 for the first year. b) The changes as a result of clarifying requirements for State Supplementation reviews will create no additional costs or savings to the department. This is a clarification of existing policy. c) The removal of information regarding redetermination of incapacity or permanent and total disability will have no fiscal impact since this information is transferred to 904 KAR 2:006. d) The removal of all Medicaid content from this regulation will have no fiscal impact since this information will be contained in regulations promulgated by the Department for Medicaid Services.

2. Continuing cost or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: 1) The change from a 6 month to a 12 month reinvestigation cycle for affected cases will eliminate case maintenance activities to process the cases. Cases targeted will require minimal case maintenance between scheduled redetermination. 2) The clarification regarding case reviews for State Supplementation cases will have no impact.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: These amendments are made in accordance with federal regulations; therefore, alternatives were not 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:

(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. (1) Yes for AFDC. In the AFDC program, states are permitted the option to establish an alternate redetermination schedule based on an approved error-prone profile system as specified in 45 CFR 206.10(a)(9)(iv). The Kentucky error-prone profile system has been approved by the Administration of Children and Families thus permitting tiering to be applied to the redetermination schedule. (2) No for State Supplementation Program. The administrative process for State Supplementation must 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. 45 CFR 206.10(a)(9)(iii) and 45 CFR 206.10(a)(9)(iv).

2. State compliance standards. The state compliance standards

are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate. States are required to redetermine eligibility for AFDC households at least every 12 months.

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
(Proposed Amendment)

907 KAR 1:009. Physicians' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [~~of Medical Assistance in accordance with Title XIX of the Social Security Act~~]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to physicians' services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program in behalf of both the categorically needy and the medically needy.

Section 1. Physicians' Services. (1) Covered services shall include those furnished by physicians through direct physician-patient contact in the office, the patient's home, a hospital, [~~a skilled~~] nursing [~~or intermediate care~~] facility or elsewhere.

(2) For purposes of the Medicaid [~~Medical Assistance~~] Program, oral surgeons shall be treated in the same manner as physicians with regard to coverage for services within their scope of licensed practice, and the term "physician" shall be construed to include oral surgeons unless the context in which it is used is to the contrary.

(3) Covered physicians' services and service limitations are shown in the Physician Manual.

Section 2. Physicians Manual. The Physician Manual specifies the conditions for participation, services covered, and limitations for the physicians' services component of the Medicaid Program. The Physician Manual, dated June 1, 1994, incorporated by reference in this administrative regulation may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. Additional [~~2.~~] Limitations. (1) [~~Coverage for initial and extensive visits shall be limited to one (1) visit per patient per physician per twelve (12) month period.~~

~~(2) Payment for outpatient psychiatric services rendered by other than board eligible and board certified psychiatrists shall be limited to four (4) such services per patient per physician per twelve (12) month period.~~

~~(3)~~] A patient placed in "lock-in" status due to overutilization shall [~~is to~~] receive services only from his lock-in provider except in the case of emergency or referral.

(2) Laboratory procedures.

(a) [~~(4) Coverage for~~] Laboratory procedures performed in the physician's office shall be limited to those procedures listed on the agency's physician laboratory benefit schedule. [~~Physician laboratory procedures are limited to those specified as payable, except that~~]

(b) The professional component of physician laboratory procedures performed by board certified pathologists in a hospital setting or an outpatient surgical clinic shall be [~~are~~] covered if [~~so long as~~] the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(3) [~~(5)~~] The cost of preparations used in injections shall not be considered a covered benefit, except as specified [~~for specified immunizations identified~~] in the Physician Manual [~~Section 3 of this regulation~~].

[~~(6) Physicians will be allowed to secure drugs for specified immunizations identified in Section 3 of this regulation free from the Department for Health Services or to purchase drugs from the same specified immunizations from the open market to provide immunizations for Medicaid recipients. Reimbursement for the cost of these drugs will be in accordance with 907 KAR 1:010.~~]

(4) [~~(7)~~] Telephone contacts with patients shall not be considered a covered benefit.

(5) Services performed or recipient contacts made exclusively by physician assistants, nurses, or other physician's employees shall not be covered under the physicians' services component.

[~~Section 3. Specified Immunizations for Medicaid are:~~
~~(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);~~
~~(2) Measles, mumps, and rubella virus vaccine, live (MMR);~~
~~(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and~~
~~(4) Hemophilus B conjugate vaccine (HBCV).~~]

Section 4. 907 KAR 1:402, Incorporation by reference of the Physician Services Manual, is repealed.

MASTEN CHILDERS II, Commissioner, Secretary

APPROVED BY AGENCY: May 23, 1994

FILED WITH LRC: May 26, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 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: Physicians and some recipients participating in the Medicaid Program. Note: A recipient notice advising Medicaid recipients of the pending reductions of services and offering them an opportunity for a hearing on the changes was mailed with the May 1994 MA cards.

(a) Direct and indirect costs or savings to those affected: None; however, it should be noted that a reduction of services will affect some recipients and the Medicaid providers who would have furnished these services.

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: $1,070,000 (savings)

2. Continuing costs or savings: $1,070,000 (savings)

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 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.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:026. Dental services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program ~~[of Medical Assistance in accordance with Title XIX of the Social Security Act]~~. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to dental services for which payment shall be made by the Medicaid ~~[Medical Assistance]~~ Program in behalf of both the categorically needy and the medically needy.

Section 1. Out-of-hospital Services. Payment for services is limited to those procedures listed in the cabinet's dental benefit schedule which are included in the following categories:

(1) Diagnostic;
(2) Preventive;
(3) Oral surgery;
(4) Endodontics;
(5) Orthodontics;
(6) Prosthetics;
(7) Operative;
(8) Crown; and
(9) Other services.

Section 2. Dental Services Manual. (1) The policies and methods by the cabinet in covering dental services are specified in the cabinet's "Dental Services Manual" dated June 1, 1994, which is incorporated by reference in this administrative regulation.

(2) The Dental Services Manual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. eastern time in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. ~~[2.]~~ Limitations for Those Under Age Twenty-one (21). The following limitations shall be applicable with regard to services provided to eligible recipients of medical assistance who are under age twenty-one (21):

(1) Dental prophylaxis, to include application of stannous fluoride, is limited to one (1) treatment per year.

(2) Bitewing x-rays are limited to four (4) x-rays per patient per year per dentist.

(3) Full mouth radiograph is limited to one (1) per patient per every two (2) years per dentist.

(4) The following orthodontic procedures are limited per twelve (12) month period to any combination totaling two (2) per patient: fixed space maintainer, band type; removable space maintainer, acrylic; removable appliance for tooth guidance; and fixed or cemented appliance for tooth guidance. Effective with regard to services provided on or after July 1, 1989, the following orthodontic procedures are available upon appropriate preauthorization by the cabinet (except orthodontic consultation, which need not be preauthorized) when services are medically necessary to correct handicapping malocclusions, with limitations as specified for the individual procedure:

(a) Orthodontic consultation is limited to one (1) per recipient per twelve (12) month period;

(b) Preauthorized orthodontia services for moderately severe handicapping malocclusions;

(c) Preauthorized orthodontia services for severe handicapping malocclusions;

(d) Retention visit or stabilization visit is allowable as a separate procedure only when a patient is referred to another practitioner in another service area and is limited to one (1) per month per recipient with a maximum of twenty-four (24) retention visits and with a maximum of ten (10) stabilization visits per lifetime.

(5) The following prosthetic procedures are limited as specified for the individual procedure:

(a) Transitional appliance, includes one (1) tooth on appliance, upper appliance, is limited to one (1) per twelve (12) month period, per patient;

(b) Transitional appliance, includes one (1) tooth on appliance, lower appliance, is limited to one (1) per twelve (12) month period, per patient;

(c) Repair of fracture of transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;

(d) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;

(e) Repairing broken complete denture with no teeth damaged is limited to three (3) per twelve (12) month period, per patient; and

(f) Repairing broken complete denture and replacing one (1) broken tooth is limited to three (3) per twelve (12) month period, per patient.

(g) Relining upper denture (flask cured only) is limited to one (1) per twelve (12) month period per patient.

(h) Relining lower denture (flask cured only) is limited to one (1) twelve (12) month period per patient.

Section 4. [3.] Inpatient Hospital Services. (1) Payment shall be made for all hospital inpatient services rendered by oral surgeons subject to the general physician limitations shown in 907 KAR 1:009, Physicians' services.

(2) Payment shall be provided for services rendered by general dentists for hospital inpatient care for patients termed to be "medically a high risk," defined as:

(a) Heart disease;

(b) Respiratory disease;

(c) Chronic bleeder;

(d) Uncontrollable patient, i.e., retardate, emotionally disturbed;

(e) Other, e.g., car accident, high temperature, massive infection.

Section 5. [4.] Coverage of Dental Benefits for Adults. The following named dental benefits only shall be covered for adults (eligible individuals aged twenty-one (21) or over), effective January 1, 1982 except as otherwise specified in this regulation.

(1) Oral surgery, as follows:

(a) Extraction, single tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987;

(b) Extraction, each additional tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987; and

(c) Root removal (but not payable on the same day the same tooth was extracted).

(2) Operative, as follows:

(a) Amalgam filling for one (1) surface cavity;

(b) Amalgam filling for two (2) surface cavity;

(c) Amalgam filling for cavity involving three (3) or more surfaces;

(d) Silicate cement filling;

(e) Acrylic, plastic, or composite filling; and

(f) Buildup to repair a fractured incisal or anterior tooth.

(3) Diagnostic services, as follows:

(a) Bitewing x-rays, limited to four (4) x-rays per patient per year per dentist;

(b) Intraoral periapical radiograph, single view; and

(c) Full mouth radiograph, single panoramic film limited to one (1) per patient per every two (2) years per dentist.

(4) Preventive services as follows: adult dental prophylaxis, effective with regard to services provided on or after August 1, 1986.

(5) Other services, as follows: emergency treatment for pain, infection and hemorrhage.

Section 6. [5.] Other Provisions, Limitations and Clarifications. (1) Intraoral periapical radiograph, single view, is limited to fourteen (14) per patient, per year, per dentist.

(2) The procedure code for stainless steel crown will also include polycarbonate (acrylic) and full composite crown for anterior teeth. However, should a provider choose to provide crowns for anterior teeth, the usual and customary charge for a stainless steel crown must be billed.

(3) Bonded veneers are not covered as a separate entity, nor should they be provided and billed under any existing procedure code.

(4) The Sargenti method of root canal treatment is not covered under the present root canal procedure codes.

(5) The Medicaid [Medical Assistance] Program recognizes five (5) surfaces of a tooth (buccal or labial, mesial, distal, lingual, occlusal or incisal). Only one (1) filling may be billed per surface with a maximum of five (5) per tooth.

(6) Nitrous oxide is not covered under the procedure for general anesthesia or any other procedure.

(7) Effective with regard to services provided on or after May 1, 1989, the following procedures shall be covered for all age groups:

(a) Alveoplasty (alveoloplasty) in conjunction with extractions per quadrant;

(b) Apicoectomy (per tooth) - first root;

(c) Apicoectomy (per tooth) each additional root;

(d) Gingivectomy or gingivoplasty - per quadrant;

(e) Gingivectomy or gingivoplasty - per tooth;

(f) Biopsy - excision of benign tumor - lesion diameter up to 1.25 cm.;

(g) Frenulectomy (frenotomy or frenectomy - separate procedure);

(h) Suture of recent small wounds up to five (5) cm.;

(i) Incision and drainage - intraoral soft tissue;

(j) Incision and drainage - extraoral soft tissue;

(k) Removal of foreign body, skin, or subcutaneous areolar tissue;

(l) Hospital call;

(m) Emergency call (intermediate level of service); and

(n) Comprehensive oral examination (limited to one (1) per provider per recipient per year).

Section 7. 907 KAR 1:414, Incorporation by reference of the Dental Services Manual, is repealed.

MASTEN CHILDERS II, Commissioner, Secretary

APPROVED BY AGENCY: May 23, 1994

FILED WITH LRC: May 26, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 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.

(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: None*

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: *This is a technical change made to keep this regulation in compliance with the new dental reimbursement regulation, 907 KAR 1:626.

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.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:030. Home health agency services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [~~of Medical Assistance in accordance with Title XIX of the Social Security Act~~]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to home health care services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program in behalf of both the categorically needy and the medically needy.

Section 1. Covered Services. Services provided by a participating home health agency shall be considered covered services when provided in accordance with a plan of care. Services provided are:

(1) Part-time nursing services;

(2) Physical therapy services;

(3) Speech therapy services;

(4) Occupational therapy services;

(5) Medical social services;

(6) Disposable medical supplies; [~~and~~]

(7) Home health aid services; and

(8) Enteral nutritional products.

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

Section 3. [~~2.~~] The amendments to this administrative regulation shall be applicable for [~~effective with regard to~~] services provided on or after November 1, 1993 [~~July 1, 1989~~].

Section 4. 907 KAR 1:430, Incorporation by reference of the Home Health Services Manual, is repealed.

MASTEN CHILDERS II, Commissioner, Secretary

APPROVED BY AGENCY: June 1, 1994

FILED WITH LRC: June 9, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 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: Will help 200 to 300 Medicaid recipients who receive medically necessary enteral nutritional supplements and the home health agencies which supply the supplements.

(a) Direct and indirect costs or savings to those affected: Will save the Medicaid recipient the cost of the enteral nutritional supplement and reimburse home health agencies who have furnished the supplements in good faith to Medicaid recipients who have a medical necessity since November 1, 1993.

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: *This change is considered budget neutral because enteral nutritional products were previously covered under the outpatient drug component. A policy clarification from the Health Care Financing Administration advised Medicaid that enteral nutritional supplements could not be covered under the outpatient drug component but medically necessary supplements could be covered under EPSDT and home health.

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.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JUNE 15, 1994

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

12 KAR 1:071. Repeal of 12 KAR 1:015, 12 KAR 1:020, 12 KAR 1:030, 12 KAR 1:035, 12 KAR 1:040, 12 KAR 1:045, 12 KAR 1:050 and 12 KAR 1:070.

RELATES TO: 1994 Acts Ch. 370
STATUTORY AUTHORITY: 1994 Acts Ch. 370
NECESSITY AND FUNCTION: The provisions of administrative regulation 12 KAR 1:015 are now contained in 12 KAR 1:115. The provisions of administrative regulation 12 KAR 1:020 are now contained in 12 KAR 1:120. Administrative regulations 12 KAR 1:115 and 12 KAR 1:120 were promulgated pursuant to the provisions of House Bill 733, enacted by the General Assembly during the 1994 Regular Session, therefore it is necessary to repeal 12 KAR 1:015 and 12 KAR 1:020. Section 6(7)C of House Bill 733, codified the language of administrative regulation 12 KAR 1:030. Section 6(7)A of House Bill 733 codified the language of administrative regulations 12 KAR 1:035 and 12 KAR 1:040. Section 3(10)A of House Bill 733 codified the language of administrative regulation 12 KAR 1:045. Section 3(4) of House Bill 733 codified the language of administrative regulation 12 KAR 1:050. Section 3(8) of House Bill 733 codified the language of administrative regulation 12 KAR 1:070. House Bill 733 was enacted by the General Assembly during the 1994 Regular Session. KRS 13A.120(2) prohibits the promulgation of an administrative regulation: "...(e) When a statute prescribes the same or similar procedure for the matter regulated; or (f) When a statute sets forth a comprehensive scheme of regulation of the particular matter....". Because these administrative regulations repeat or summarize statutory language, the provisions of KRS 13A.120(2) require that it be repealed.

Section 1. 12 KAR 1:015, "Testing and Labeling Terms" is hereby repealed.

Section 2. 12 KAR 1:020, "Noxious Weed Seed" is hereby repealed.

Section 3. 12 KAR 1:030, "Minimum Germination" is hereby repealed.

Section 4. 12 KAR 1:035, "Germination Test Date" is hereby repealed.

Section 5. 12 KAR 1:040, "Hermetically Sealed Containers" is hereby repealed.

Section 6. 12 KAR 1:045, "Hard and Dormant Seed" is hereby repealed.

Section 7. 12 KAR 1:050, "Current Germination Test; Relabeling" is hereby repealed.

Section 8. 12 KAR 1:070, "Treated Seed Label" is hereby repealed.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: June 2, 1994
FILED WITH LRC: June 3, 1994 at 10 a.m.
PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:071, "Repeal of KAR 1:015, 12 KAR 1:020, 12 KAR 1:030, 12 KAR 1:035, 12 KAR 1:040, 12 KAR 1:045, 12 KAR 1:050 and 12 KAR 1:070", shall be held on Friday, July 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, July 15, 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: N/A
(2) Effects on the promulgating administrative body (Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky): N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplicating: The language of administrative regulations, 12 KAR 1:030, 12 KAR 1:035, 12 KAR 1:040, 12 KAR 1:045, 12 KAR 1:050 and 12 KAR 1:070 was codified into sections of House Bill 733 enacted by the General Assembly during the 1994 Regular Session. The provisions of 12 KAR 1:015 and 12 KAR 1:020 are now contained in 12 KAR 1:115 and 12 KAR 1:120 respectively. 12 KAR 1:115 and 12 KAR 1:120 were promulgated pursuant to the provisions of House Bill 733 enacted by the General Assembly during the 1994 Regular Session.
(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 other regulations.

KENTUCKY REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research

103 KAR 15:070. Electronic funds transfer.

RELATES TO: 1994 Ky. Acts ch. 4, Sec. 1
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: Under the authority of KRS Chapter 131, this administrative regulation prescribes the electronic funds transfer requirements for certain payments of tax.

Section 1. Definitions. "Lookback period" means the twelve (12) month period ending on December 31 of the year immediately preceding the current calendar year. For example, the lookback period for calendar year 1994 is the period beginning on January 1, 1993 and ending on December 31, 1993.

Section 2. Reporting and Payment Requirements. (1) Any

taxpayer whose average monthly liability for the sales and use tax required to be collected or paid under KRS Chapter 139 exceeds $25,000 or any employer whose average monthly liability for the income tax required to be withheld under KRS 141.310 exceeds $25,000 shall pay the tax by electronic funds transfer.

(2) Execution of any electronic funds transfer transaction shall conform to the guidelines and procedures of each participating financial institution.

(3) Any taxpayer or employer may volunteer to pay the tax by electronic funds transfer by making a written request to the cabinet and, if approved by the cabinet, shall be subject to the same requirements as any taxpayer or employer required to electronically transfer the tax.

Section 3. Procedures. (1) Due date of electronic funds transfer.

(a) The due date of any electronic funds transfer for any tax is governed by the applicable law and regulations pertaining to that tax.

(b) The initiation date recorded in the automated clearing house system by the originating financial depository institution for any electronic funds transfer shall be the payment date.

(2) Manner of electronic funds transfer. Separate electronic fund transfers are required for each type tax electronically transferred under the provisions of KRS Chapter 131.

(3) Overpayment or underpayment of tax. Any overpayment of tax may be applied to the next amount electronically transferred or may be refunded upon request by the taxpayer or employer. If the amount of tax liability for a taxable period exceeds the total amount electronically transferred for the same period, the taxpayer or employer shall pay the additional tax due as determined on the applicable reconciliation return. The taxpayer or employer shall not pay the additional tax due electronically.

Section 4. Change in Reporting and Payment Requirements for Electronic Funds Transfer. Once the cabinet makes a determination regarding the taxpayer's or employer's reporting and payment requirements for electronic funds transfer, the taxpayer or employer shall comply with the requirements until a written request to change is filed with and approved by the cabinet.

Section 5. Penalties and Interest. Any taxpayer or employer failing to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 131.180 and interest as provided in KRS 131.183.

Section 6. Effective Date. This administrative regulation applies to any taxable or payroll period beginning after December 31, 1994.

KIM BURSE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994 at 10 a.m. in Room 129 at the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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. 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 to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Jennifer C. Hays, Kentucky Revenue Cabinet, Division of Tax Policy & Research, 200 Fair Oaks Drive, Building #2, Frankfort, Kentucky 40620, (502) 564-6843.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jennifer C. Hays

(1) Type and number of entities affected: This regulation affects approximately 700 employers subject to withholding tax and 500 taxpayers collecting and remitting sales and use tax.

(a) Direct and indirect costs or savings to those affected: Direct savings will be realized by reducing the number of returns required to be manually filed with the cabinet. *See below.

(b) Reporting and paperwork requirement: Reporting and paperwork requirements will be reduced as explained in paragraph (a).

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: For those taxpayers or employers choosing the debit method of transferring funds, an estimated cost of $1.40 to $1.90 per transaction will be incurred by the cabinet. The cabinet will incur no costs if the taxpayer or employer chooses the credit method of transferring funds. Direct savings resulting from a reduction in the number of returns filed will ultimately be realized for each taxpayer or employer who is required or who volunteers to electronically transfer tax.

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

(3) Assessment of anticipated effect on state and local revenues: While no additional revenues will be received by requiring electronic fund transfers, tax receipts will be deposited into the State Treasury in a more timely and efficient manner resulting in increased investment income.

(4) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods did not allow for a more timely nor efficient manner of depositing tax receipts.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(6) Any additional information or comments: *If the taxpayer or employer chooses the credit method of transferring funds, an estimated cost of $1.50 per transaction will be incurred.

TIERING: Was tiering applied? No. The provisions of this regulation will be applied equally to all taxpayers.

KENTUCKY REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research

103 KAR 18:150. Employer's withholding reporting requirements.

RELATES TO: KRS 141.330, 1994 Ky. Acts ch. 4, Sec. 1

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: Under authority of KRS 141.330, this administrative regulation prescribes the reporting and payment requirements for employers withholding Kentucky income tax.

Section 1. Definitions. As used in this administrative regulation, "lookback period" means the twelve (12) month period ending on December 31 of the year immediately preceding the current calendar year. For example, the lookback period for calendar year 1994 is the period beginning on January 1, 1993 and ending on December 31, 1993.

Section 2. Reporting and Payment Requirements. Unless otherwise required or allowed by Section 3 of this administrative regulation:

(1) Any employer who withheld income tax of less than $400 during the lookback period shall report and pay the tax annually using Revenue Form K-3, "Employer's Annual Reconciliation Return."

Revenue Form K-3 and the income tax withheld shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(2) Any employer who withheld income tax of $400 or more but less than $2,000 during the lookback period shall report and pay the tax quarterly using Revenue Form K-1, "Employer's Return of Income Tax Withheld." Revenue Form K-1 and the income tax withheld each quarter shall be filed and paid on or before the last day of the month following the close of each of the first three (3) quarters of the calendar year (April 30, July 31, and October 31). Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the fourth quarter shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(3) Any employer who withheld income tax of $2,000 or more but less than $50,000 during the lookback period shall report and pay the tax monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld." Revenue Form K-1 and the income tax withheld each month shall be filed and paid on or before the 15th day of the following month for each of the first eleven (11) months of the calendar year. Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the last month shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(4)(a) Except as provided in paragraph (b) of this subsection, any employer who withheld income tax of $50,000 or more during the lookback period shall report and pay the tax twice monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld." Revenue Form K-1 and the income tax withheld during the first through the 15th day of each month of the calendar year shall be reported and paid on or before the 25th day of that month. Revenue Form K-1 and the income tax withheld during the 16th through the last day of each month of the calendar year shall be reported and paid on or before the tenth day of the following month. However, Revenue Form K-1 and the income tax withheld during the first calendar month shall be filed and paid on or before the tenth of the following month (February 10), and the income tax withheld for the period beginning December 16 and ending on December 31 shall be paid with Revenue Form K-3, "Employer's Annual Reconciliation Return," which shall be filed on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(b) Any employer who withheld income tax during the lookback period of $50,000 or more and whose average monthly income tax withheld during the lookback period is more than $25,000 shall pay the tax withheld by electronic funds transfer and shall report the tax withheld in accordance with Section 3(3) of this administrative regulation.

(5) The cabinet shall provide written notification of the reporting and payment requirements to any employer who does not have a lookback period.

Section 3. Electronic Fund Transfers. (1) If, on any day during a reporting period, an employer accumulates $100,000 or more of total income tax withheld before a current electronic transaction is otherwise due, the employer shall pay the tax withheld by electronic funds transfer. The employer shall electronically transfer the tax withheld as provided by 103 KAR 15:070 by the close of the first banking day after the first day the employer accumulates $100,000 or more of income tax withheld and shall report the tax withheld in accordance with subsection (3) of this section.

(2)(a) Any employer not required to pay the tax by electronic funds transfer may make a written request to the cabinet and, if approved by the cabinet, shall be subject to the same requirements as those employers required to electronically transfer the tax.

(b) Any employer permitted to pay by electronic funds transfer shall continue to pay the tax withheld by electronic funds transfer until the cabinet authorizes the employer in writing to change his reporting and payment method.

(3) Any employer paying the tax withheld by electronic funds transfer shall do so in accordance with 103 KAR 15:070 and shall file a quarterly report with the cabinet using Revenue Form K-1-E, "Employer's EFT Return of Income Tax Withheld." Revenue Form K-1-E shall be filed with the cabinet on or before the last day of the month following the close of each of the first three (3) quarters of the calendar year (April 30, July 31, and October 31). Revenue Form K-3, "Employer's Annual Reconciliation Return," shall be filed on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

Section 4. Authority to Change Reporting and Payment Requirements. (1) The cabinet shall have the authority to change annually the reporting or payment requirements of any employer upon written notice to the employer.

(2) Upon written request by any employer and approval by the cabinet, the cabinet may change the reporting or payment frequency prescribed by this administrative regulation.

Section 5. Penalties and Interest. Any employer failing to comply with the provisions of this regulation shall be subject to penalties as provided in KRS 131.180 and interest as provided in KRS 131.183.

Section 6. Effective Date. The provisions of this administrative regulation shall be effective for any payroll period beginning after December 31, 1994.

Section 7. 103 KAR 18:030, 103 KAR 18:040, and 103 KAR 18:141 are hereby repealed upon the effective date of this administrative regulation.

KIM BURSE, Secretary

APPROVED BY AGENCY: June 14, 1994

FILED WITH LRC: June 15, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994 at 10 a.m. in Room 129 at the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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. 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 to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Jennifer C. Hays. Kentucky Revenue Cabinet, Division of Tax Policy & Research, 200 Fair Oaks Drive, Building #2, Frankfort, KY 40620, (502) 564-6843.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jennifer C. Hays

(1) Type and number of entities affected: This regulation affects approximately 95,000 employers who have employees working in Kentucky. Approximately 37,000 of these employers will incur a change in filing frequency with 22,000 filing less frequently.

(a) Direct and indirect costs or savings to those affected: Direct costs or savings will be realized by any employer required to change filing frequencies or the method of payment. Some employers will be required to file more returns while others will be required to file fewer returns. Indirect savings will be achieved by lessening confusion regarding compliance with this regulation since Kentucky's reporting

and remitting requirements will more closely reflect the requirements established for reporting and remitting federal employment taxes.

(b) Reporting and paperwork requirement: While more frequent returns may be required for some employers, those who volunteer for electronic funds transfer will eliminate any additional costs or reporting burdens and in some instances will reduce the present cost of reporting and remitting withholding tax.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Direct costs will be incurred by processing an additional 47,000 monthly and twice-monthly returns per year if employers do not volunteer to electronically transfer the tax. However, if 2,400 twice-monthly filers volunteer to electronically transfer the tax, the cabinet would immediately realize a savings since the necessity to process the additional returns would be eliminated. The savings would increase for each additional employer electing to electronically transfer the tax. Indirect savings will be realized through less taxpayer assistance since Kentucky's reporting and remitting requirements will more closely reflect the requirements established for reporting and remitting federal employment taxes.

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

(3) Assessment of anticipated effect on state and local revenues: A one-time windfall of approximately $37 million will be created by an acceleration of income withholding tax revenues into the FY 94-95 from the FY 95-96.

(4) Assessment of alternative methods; reasons why alternative were rejected: The objective of this administrative regulation is to more closely align the Kentucky withholding tax reporting and remittance requirements with those of the federal government. The accomplishment of this objective will reduce the number and variety of different reporting and remitting requirements faced by employers. All other alternative methods were rejected because they did not meet the noted objectives better than this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The overlapping administrative regulations referenced in Section 7 are repealed in this administrative regulation.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The provisions of this regulation will be applied equally to all employers.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology

201 KAR 17:025. Requirements for an interim license as a speech-language pathology assistant.

RELATES TO: KRS 334A.035(2), 1994 Ky. Acts ch. 32, Sec. 4

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY AND FUNCTION: 1994 Ky. Acts ch. 32, Sec. 4 establishes the guidelines for licensure as a speech-language pathology assistant. KRS 334A.035(2) requires an applicant for licensure as a speech-language pathology assistant to complete postgraduate professional experience in order to become licensed. This administrative regulation establishes the requirements for interim licensure.

Section 1. Education. (1) In order to receive an interim license to become a speech-language pathology assistant, the applicant shall possess a baccalaureate degree in speech-language pathology.

(2) A baccalaureate degree in speech-language pathology shall be a baccalaureate degree from a regionally accredited institution in communication sciences or disorders or its equivalent.

(3) In order to be considered as equivalent, the applicant shall have obtained a baccalaureate degree and a minimum of twenty-seven (27) hours in the core areas of communication sciences or disorders including but not limited to the following:

(a) Anatomy and physiology;

(b) Phonetics and speech science;

(c) Speech and language development;

(e) Communication disorders in children;

(f) Audiology;

(g) Aural rehabilitation; and

(h) Intervention for children with communication disorders.

Section 2. Supervision. (1) The interim licensee shall function under the supervision of an appropriate supervisor during the period of interim licensure.

(2) It shall be the responsibility of the supervisor to design and provide a supervision system that protects pupil welfare and maintains the highest possible standards of quality speech-language pathology services.

(3) Additional supervision may be required, based on the experience of the speech-language pathology assistant, the pupils served, and the physical or geographic proximity to the supervisor.

(4) As the supervisory responsibility of the supervisor increases, the direct service responsibilities of the supervisor shall decrease.

(5) Treatment for the pupils served remains the responsibility of the supervisor. Therefore, the level of supervision required is considered the minimum level necessary for the supervisor to retain direct contact with the pupils.

(6) Each speech-language pathology assistant shall be required to receive no less than three (3) hours per full-time week of documented direct supervision. Supervision shall be adjusted proportionally for less than full-time employment. This ensures that the supervisor will have direct contact time with the speech-language pathology assistant as well as with the pupil.

(7) Direct supervision means on-site, in-view observation and guidance as a clinical activity is performed.

(8) Supervision shall provide information about the quality of the speech-language pathology assistant's performance with assigned tasks and verify that clinical activity is limited to tasks specified in the speech-language pathology assistant's scope of responsibilities.

(9) Information obtained during direct supervision may include data relative to:

(a) Accuracy in implementation of screening, diagnostic, and treatment procedures;

(b) Agreement between the assistant and the supervisor on correct or incorrect judgment of target behavior;

(c) Accuracy in recording data; and

(d) Ability to interact effectively with the pupil.

(10) Indirect supervision shall be required no less than three (3) hours per full-time week. Supervision shall be adjusted proportionally for less than full-time employment. Indirect supervision may include:

(a) Demonstration;

(b) Record review;

(c) Review and evaluation of audio or videotaped sessions; or

(d) Supervisory conferences that may be conducted by telephone.

(11) A minimum total of six (6) hours of direct and indirect supervision per full-time week shall be required for each speech-language pathology assistant and shall be documented. Additional direct and indirect supervision may be necessary depending on the experience of the assistant and the needs of the pupil.

(12) At no time may a speech-language pathology assistant provide direct services when a supervising speech-language pathologist cannot be reached by personal contact, phone, pager, or some other immediate means.

(13) If for any reason (i.e., maternity leave, illness, change of jobs) the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology assistant may not provide service until a fully qualified speech-language pathologist has been designated as the speech-language pathology assistant's

supervisor.

(14) Although more than one (1) supervisor may provide supervision of a speech-language pathology assistant, no supervisor may be listed as the supervisor of record for more than two (2) speech-language pathology assistants. When multiple supervisors are used, one (1) shall be designated as the supervisor of record.

(15) The maximum number of pupils served by the speech-language pathology assistant shall not exceed the caseload established for a speech-language pathologist by administrative regulation.

Section 3. Postgraduate Professional Experience. (1) The applicant shall obtain the equivalent of not less than nine (9) months of full-time professional experience with full-time employment defined as a minimum of thirty (30) clock hours of work a week. This requirement also may be fulfilled by part-time employment as follows:

(a) Work of fifteen (15) through nineteen (19) hours per week over eighteen (18) months;

(b) Work of twenty (20) through twenty-four (24) hours per week over fifteen (15) months; or

(c) Work of twenty-five (25) through twenty-nine (29) hours per week over twelve (12) months.

(2) In the event that part-time employment is used to fulfill a part of the postgraduate professional experience, 100 percent of the minimum hours of the part-time work per week requirement must be spent in direct professional experience.

(3) The postgraduate professional experience must be completed within a maximum period of thirty-six (36) consecutive months.

Section 4. Evaluation and Recommendation. Within thirty (30) days after completion of the postgraduate professional experience, the applicant and his supervisor shall submit a written report to the board verifying the successful completion of postgraduate professional experience.

Section 5. Examination for Licensure as a Speech-language Pathology Assistant. (1) During the period of interim licensure, an applicant for licensure shall submit to an examination composed of the Praxis Series, Professional Assessments for Beginning Teachers, specialty area test in speech-language pathology and administered by the Educational Testing Service (ETS).

(2) The passing score on the examination for licensure as a speech-language pathology assistant shall be 480.

(3) If an applicant fails the examination, the applicant may, with payment of the required fee, be rescheduled to take the examination at its next regularly scheduled date.

Section 6. Licensure as a Speech-language Pathology Assistant. Upon successful completion of each requirement set forth in this administrative regulation, completion of the required application, and payment of the required fee, the holder of an interim license shall be eligible to be licensed as a speech-language pathology assistant and shall immediately apply for licensure.

JOAN DANCE, Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 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 July 20, 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 applying for licensure as a speech-language pathology assistant.

(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: None

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 an application with the board and reports must be made periodically through the process.

(2) Effects on the promulgating administrative body: This regulation establishes the requirements for interim licensure as a speech-language pathology assistant.

(a) Direct and indirect costs or savings:

1. First year: Application and examination costs will be recovered through fees.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: An application and reports must be filed with the board.

(3) Assessment of anticipated effect on state and local revenues: Negligible

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation establishes the requirements for interim licensure.

(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 Speech-Language Pathology and Audiology

201 KAR 17:027. Supervision requirements for a speech-language pathology assistant.

RELATES TO: 1994 Ky. Acts ch. 32, Sec. 4

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY AND FUNCTION: 1994 Ky. Acts, ch. 32, Sec. 4 establishes the requirements for licensure as a speech-language pathology assistant. One (1) of the requirements is that the speech-language pathology assistant may only practice under supervision. This administrative regulation establishes the supervisory requirements.

Section 1. The supervision requirements specified in these guidelines are minimum requirements.

(1) It shall be the responsibility of the supervisor to design and provide a supervision system that protects pupil welfare and main-

tains the highest possible standards of quality speech-language pathology services.

(2) Additional supervision may be required, based on the experience of the speech-language pathology assistant, the pupils served, and the physical or geographic proximity to the supervisor.

(3) As the supervisory responsibility of the supervisor increases, the direct service responsibilities of the supervisor shall decrease.

Section 2. Treatment for the pupils served remains the responsibility of the supervisor. Therefore, the level of supervision required is considered the minimum level necessary for the supervisor to retain direct contact with the pupils.

Section 3. Each speech-language pathology assistant shall be required to receive no less than two (2) hours per full-time week of documented direct supervision. This ensures that the supervisor will have direct contact time with the speech-language pathology assistant as well as with the pupil.

(1) Direct supervision means on-site, in-view observation and guidance as a clinical activity is performed.

(2) Supervision shall provide information about the quality of the speech-language pathology assistant's performance with assigned tasks and verify that clinical activity is limited to tasks specified in the speech-language pathology assistant's scope of responsibilities.

(3) Information obtained during direct supervision may include data relative to:

(a) Accuracy in implementation of screening, diagnostic, and treatment procedures;

(b) Agreement between the assistant and the supervisor on judgment of target behavior;

(c) Accuracy in recording data; and

(d) Ability to interact effectiveiy with the pupil.

Section 4. Indirect supervision shall be required no less than two (2) hours per full-time week and may include:

(1) Demonstration;

(2) Record review;

(3) Review and evaluation of audio or videotaped sessions; or

(4) Supervisory conferences that may be conducted by telephone.

Section 5. A minimum total of four (4) hours of direct and indirect supervision per full-time week shall be required for each speech-language pathology assistant and shall be documented. Additional direct and indirect supervision may be necessary depending on the experience of the assistant and the needs of the pupil.

Section 6. At no time may a speech-language pathology assistant provide direct services when a supervising speech-language pathologist cannot be reached by personal contact, phone, pager, or some other immediate means.

Section 7. If for any reason (i.e., maternity leave, illness, change of jobs) the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology assistant may not provide service until a fully qualified speech-language pathologist has been designated as the speech-language pathology assistant's supervisor.

Section 8. Although more than one (1) supervisor may provide supervision of a speech-language pathology assistant, no supervisor may be listed as the supervisor of record for more than two (2) speech-language pathology assistants. When multiple supervisors are used, one (1) shall be designated as the supervisor of record.

Section 9. The maximum number of pupils served by the speech-language pathology assistant shall not exceed the caseload established for a speech-language pathologist by administrative regulation.

JOAN DANCE, Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: June 15, 1994 at 10 am.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 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 July 20, 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 holding licensure as a speech-language pathology assistant.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: There are renewal fees.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The licensee will be required to report the name of their supervisor to the board.

(2) Effects on the promulgating administrative body: This regulation establishes the supervision requirements for persons licensed as speech-language pathology assistants.

(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: Supervisors must make periodic reports.

(3) Assessment of anticipated effect on state and local revenues: Negligible

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation establishes the supervisory requirements.

(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 Respiratory Care

201 KAR 29:070. Scope of practice.

RELATES TO: KRS 314A.100

STATUTORY AUTHORITY: KRS 314A.205(3)

NECESSITY AND FUNCTION: This administrative regulation

clarifies the types of activities which are permissible by persons holding certification as a respiratory care practitioner.

Section 1. Definitions. "Established institutional protocol" shall mean a written set of guidelines for initiating, adjusting or discontinuing care which have been approved by the medical director. The "established institutional protocol" shall also describe the specific training or education necessary to enable the respiratory care practitioner to competently perform each of these procedures.

Section 2. In addition to those procedures set forth specifically in KRS 314A.100(1), a respiratory care practitioner may perform other procedures not specifically prohibited by KRS 314A.100(1). In the performance of these procedures the respiratory care practitioner shall practice in accordance with "established institutional protocol."

Section 3. Respiratory care practitioners shall at all times be responsible for practicing within their level of competence. Failure to do so or by engaging in those procedures specifically prohibited by KRS 314A.100(1) or by performing procedures not listed in the established institutional protocol shall constitute unprofessional conduct in the practice of respiratory care.

JAMES RAVENCRAFT, Chairman
APPROVED BY AGENCY: June 7, 1994
FILED WITH LRC: June 15, 1994 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 26, 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 July 21, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 respiratory care practitioners.
(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: Practitioners may be required to furnish documentation of training and education for activities.
(2) Effects on the promulgating administrative body: This amendment clarifies the scope of practice for a respiratory care practitioner.
(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: There will be no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation provides clarity to scope of practice.
(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

301 KAR 3:027. Hunting and fishing method exemptions for disabled persons.

RELATES TO: KRS 150.360, 150.390, 150.620,
STATUTORY AUTHORITY: KRS 13A.350, 28 CFR Parts 35, 36, 43 CFR Part 17
NECESSITY AND FUNCTION: To allow persons with physical disabilities to hunt or fish by establishing criteria and application procedures for specific hunting or fishing method exemptions. This administrative regulation is necessary to comply with provisions of the Americans with Disabilities Act which mandate reasonable accommodations be made for persons with disabilities.

Section 1. Hunting or Fishing Method Exemptions for Persons with Disabilities. (1) Persons whose physical disabilities make it impossible for them to hunt or fish by conventional methods may apply by letter to the department for a hunting or fishing methods exemption.
(2) A signed physician's statement shall accompany the application letter. This statement shall state:
(a) The nature of the disability; and
(b) That the exemption is necessary to allow the applicant to hunt or fish; and
(c) Whether the disability is permanent or temporary; and
(d) If the disability is temporary, when the physician anticipates that the applicant can hunt or fish without the exemption.
(3) The department may authorize any reasonable exception that would permit a person with disabilities to hunt or fish.
(4) Persons granted exemptions shall carry the authorization while hunting or fishing.
(5) Exemptions shall expire as stated in the authorization.

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: June 10, 1994
FILED WITH LRC: June 15, 1994 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 28, 1994, at 10 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 July 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: 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: Approximately 1200 disabled sportsmen currently apply for method exemptions.

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Applicants must write a letter to the department requesting an exemption and obtain a physician's statement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs and savings:

1. First year: Minor costs associated with processing and mailing authorizations.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: No additional costs are anticipated.

(b) Reporting and paperwork requirements: The department must process and file letters of applications and issue authorizations.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Two alternatives exist: (1) To hold disabled hunters and fishermen to the same requirements as other sportsmen, or (2) To allow officers in the field to make determinations on a case-by-case basis. Alternative one is not acceptable under state and federal mandates to make reasonable accommodations to disabled persons. Alternative two is not acceptable because a field officer is not qualified to judge the nature and extent of disabilities.

(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: (1) The provisions of this regulation have been contained in the department's deer hunting regulation for several years. (2) Examples of the exemptions granted are allowing disabled hunters to shoot from a vehicle; permitting hunters without full use of both arms to use crossbows during the regular archery season, or permitting fishermen to drive to a lake on a wildlife management area where vehicles are normally not permitted.

TIERING: Was tiering applied? Yes. Considering each request on a case-by-case basis assures that the department will be able to accommodate the greatest number of disabled hunters and anglers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 43 CFR Part 17 and 28 CFR parts 35 and 36.

2. State compliance standards. This administrative regulation allows the department to make any reasonable accommodation which would allow a disabled person to hunt or fish.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act mandates that reasonable accommodations be made for persons with disabilities.

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.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Weights and Measures

302 KAR 78:010. Tobacco sales to persons under the age of eighteen (18).

RELATES TO: KRS Chapter 438, Senate Bill 316

STATUTORY AUTHORITY: Senate Bill 316

NECESSITY AND FUNCTION: Senate Bill 316 requires the Department of Agriculture to enforce KRS 438.045, relating to sales of tobacco products to those under the age of eighteen (18) years. Section 4 requires the department to specify by administrative regulation the manner in which each resident wholesaler, nonresident wholesaler, or subjobber who makes tobacco products available to a retail establishment reports the name and address of the owner of the retail establishment to the department.

Section 1. Any resident wholesaler, nonresident wholesaler, or subjobber making tobacco products available to a retail establishment for sale or distribution shall report, in writing, the name and address of the owner of the retail establishment to the department on or before January 1 of each year.

Section 2. This written notification should be sent to the Kentucky Department of Agriculture, Attention: Tobacco Program Coordinator, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: June 10, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 25, 1994, at 1 p.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 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 attend the public hearing or written comments on the proposed administrative regulation to: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Donna Dutton

(1) Type and number of entities affected: All resident wholesalers, nonresident wholesaler or subjobber making tobacco products available to a retail establishment and all retail establishments who sell tobacco products.

(a) Direct and indirect costs or savings to those affected: No cost involved.

1. First year: No cost involved.

2. Continuing costs or savings: No cost involved.

3. Additional factors increasing or decreasing costs (note any

effects upon competition): No cost involved.

(b) Reporting and paperwork requirements: The wholesalers will have to make all retail establishments names and addresses that are effected available to the department.

(2) Effects on the promulgating administrative body: The department will be responsible for annually conducted inspections of all retail establishments where tobacco products are sold. The department will also be responsible for enforcement of this legislation.

(a) Direct and indirect costs or savings:

1. First year: No new employees will be hired but costs will be incurred in conducting the inspections and enforcement.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: The cost should remain approximately the same.

(b) Reporting and paperwork requirements: Additional paperwork will be required with the inspections of the retail establishments.

(3) Assessment of anticipated effect on state and local revenues: There will be a minimal effect. Any fines collected will be designated for the department for enforcement.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: N/A

TIERING: Is tiering applied? No. This administrative regulation treats persons effected in Kentucky the same.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:100. Standards of performance for petroleum refineries.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart J, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:045 which provides for the control of emissions from petroleum refineries. 401 KAR 59:045 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for petroleum refineries are governed by 40 CFR Part 60, Subpart J, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. (1) The provisions of this administrative regulation shall apply to the following facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and all Claus sulfur recovery plants except Claus plants of twenty (20) long tons per day (LTD) or less. The Claus sulfur recovery plant need not be physically located within the boundaries of a petroleum refinery to be an affected facility, provided it processes gases produced within a petroleum refinery.

(2) This administrative regulation shall apply to any fluid catalytic cracking unit catalyst regenerator or fuel gas combustion device under subsection (1) of this section that commences construction or modification after June 11, 1973, or any Claus sulfur recovery plant under subsection (1) of this section that commences construction or modification after October 4, 1976.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:045, New petroleum refineries, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for petroleum refineries, 40 CFR Part 60, Subpart J. The federal NSPS regulation applies to the following facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and all Claus sulfur recovery plants except Claus plants of 20 long tons per day (LTD) or less. The Claus sulfur recovery plant need not be physically located within the boundaries of a petroleum refinery to be an affected facility,

provided it processes gases produced within a petroleum refinery. This administrative regulation shall apply to any fluid catalytic cracking unit catalyst regenerator or fuel gas combustion device listed above that commences construction or modification after June 11, 1973, or any Claus sulfur recovery plant indicated above that commences construction or modification after October 4, 1976. Any fluid catalytic cracking unit catalyst regenerator described in paragraph (2) that commences construction or modification on or before January 17, 1984, is exempted from compliance with the following standards for sulfur oxides: With an add-on control device, reduce sulfur dioxide emissions to the atmosphere by 90 percent or maintain sulfur dioxide emissions to the atmosphere less than or equal to 50 ppm by volume (vppm), whichever is less stringent; or without the use of an add-on control device, maintain sulfur oxides emissions calculated as sulfur dioxide to the atmosphere less than or equal to 9.8 kg/1,000 kg coke burn-off; and process in the fluid catalytic unit fresh feed that has a total sulfur content no greater than 0.30 percent by weight. Also exempted from the provisions of this administrative regulation is any fluid catalytic cracking unit in which a contact material reacts with petroleum derivatives to improve feedstock quality and in which the contact material is regenerated by burning off coke and/or other deposits that commences construction or modification on or before January 17, 1984.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 56 FR 4176 (February 4, 1991).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting requirements appear at 40 CFR 60.107.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart J, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA does, however, exempt from Subpart J, any fluid catalytic cracking unit in which a contact material reacts with petroleum derivatives to improve feedstock quality and in which the contact material is regenerated by burning off coke and/or other deposits that commences construction or modification on or before January 17, 1984. Any fluid catalytic cracking unit catalyst regenerator that commences construction or modification on or before January 17, 1984, is exempted from compliance to specific standards for sulfur oxides (See (1) Type and number of entities affected). The provisions of the federal NSPS regulation apply to all affected facilities as follows: any fluid catalytic cracking unit catalyst regenerator or fuel gas combustion device that commences construction or modification after June 11, 1973; and any Claus sulfur recovery plants (except Claus plants of 20 long tons per day or less), that commences construction or modification after October 4, 1976. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart J, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart J and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter (PM) appears at 40 CFR 60.102. The standard for carbon monoxide appears at 40 CFR 60.103, and the standard for sulfur oxides (SO) appears at 40 CFR

60.104. Provisions for monitoring of emissions and operations appear at 40 CFR 60.105.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:110. Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart K, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from storage vessels for petroleum liquids. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for new storage vessels for petroleum liquids are governed by 40 CFR Part 60, Subpart K, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. (1) The provisions of this administrative regulation shall apply to each storage vessel for petroleum liquids which has a storage capacity greater than 151,412 liters (40,000) gallons, but not exceeding 246,052 liters (65,000 gallons), that commences construction or modification after March 8, 1974, and prior to May 19, 1978.

(2) An affected facility having a capacity greater than 246,052 liters (65,000 gallons), that commences construction or modification after June 11, 1973, and prior to May 19, 1978, is subject to the provisions of this administrative regulation.

(3) This administrative regulation shall not apply to storage vessels for petroleum or condensate stored, processed, and/or treated at a drilling and production facility prior to custody transfer.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for storage vessels for petroleum liquids, 40 CFR Part 60, Subpart K. The federal NSPS regulation applies to each storage vessel for petroleum liquids which has a storage capacity greater than 151,412 liters (40,000 gallons) that commences construction or modification after March 8, 1974, and prior to May 19, 1978. This administrative regulation shall also apply to each storage vessel having a capacity greater than 246,052 liters (65,000 gallons) that commences construction or modification after June 11, 1973, and prior to May 19, 1978. Storage vessels for petroleum or condensate stored, processed, and/or treated at a drilling and production facility prior to custody transfer, are not subject to this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 52 FR 11429 (April 8, 1987).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart K, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA does, however, exempt from Subpart K, storage vessels for petroleum or condensate stored, processed, and/or treated at a drilling and production facility prior to custody transfer. The provisions of the federal NSPS regulation apply to all affected facilities as follows: each storage vessel for petroleum liquids which has a storage capacity greater than 151,412 liters (40,000 gallons). Subject to the requirements of the NSPS regulation is any facility which: (1) has a capacity greater than 151,412 liters (40,000 gallons), but not exceeding 246,052 liters (65,000 gallons) that commences construction or modification after March 8, 1974, and prior to May 19, 1978; and (2) has a capacity greater than 246,052 liters (65,000 gallons) that commences construction or modification after June 11, 1973, and prior to May 19, 1978. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart K, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart K and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for volatile organic compounds (VOC) appears at 40 CFR 60.112.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:111. Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart Ka, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from storage vessels for petroleum liquids. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for new storage vessels for petroleum liquids are governed by 40 CFR Part 60, Subpart Ka, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. (1) The provisions of this administrative regulation shall apply to each storage vessel for petroleum liquids which has a storage capacity greater than 151,412 liters (40,000 gallons) that commences construction after May 18, 1978.

(2) Each petroleum liquid storage vessel with a capacity of less than 1,589,873 liters (420,000 gallons) used for petroleum or condensate stored, processed, or treated prior to custody transfer is not subject to this administrative regulation.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

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(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for storage vessels for petroleum liquids, 40 CFR Part 60, Subpart Ka. The federal NSPS regulation applies to each storage vessel for petroleum liquids which has a storage capacity greater than 151,412 liters (40,000 gallons) that commences construction after May 18, 1978, and prior to July 23, 1984. Each petroleum liquid storage vessel with a capacity of less than 1,589,873 liters (420,000 gallons) used for petroleum or condensate stored, processed, or treated prior to custody transfer is not subject to this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 52 FR 11429 (April 8, 1987).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart Ka, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA does, however, exempt from Subpart Ka, petroleum liquid storage vessels with a capacity of less than 1,589,873 liters (420,000 gallons) used for petroleum or condensate stored, processed, or treated prior to custody transfer. The provisions of the federal NSPS regulation apply to each storage vessel for petroleum liquids which has a storage capacity greater than 151,412 (40,000 gallons) that commences construction after May 18, 1978, and prior to July 23, 1984. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a

local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart Ka, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart Ka and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for volatile organic compounds (VOC) appears at 40 CFR 60.112a.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:150. Standards of performance for sewage treatment plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart O, 42 USC 7411, Federal Register, 59 FR 5107, February 3, 1994

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:070 which provides for the control of emissions from sewage treatment plants. 401 KAR 59:070 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for sewage treatment plants are governed by 40 CFR Part 60, Subpart O, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, and as amended in the Federal Register, 59 FR 5107, February 3, 1994. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each incinerator that combusts wastes containing more than ten (10) percent sewage sludge (dry basis) produced by municipal sewage treatment plants, or each incinerator that charges more than 1000 kg (2205 lb) per day municipal sewage sludge (dry basis). An affected facility that commences construction or modification after June 11, 1973, is subject to this administrative regulation.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:070, New sewage treatment plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for sewage treatment plants, 40 CFR Part 60, Subpart O, and as amended in the Federal Register, 59 FR 5107, February 3, 1994. The federal NSPS regulation applies to each affected facility which is each incinerator that combusts wastes containing more than 10 percent sewage sludge (dry basis) produced by municipal sewage treatment plants, or each incinerator that charges more than 1000 kg (2205 lb) per day municipal sewage sludge (dry basis), that commences construction or modification after June 11, 1973.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 27015 (June 27, 1989), and as amended at 59 FR 5107 (February 3, 1994).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting requirements appear at 40 CFR 60.155.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart O, and as amended in the Federal Register, 59 FR 5107, February 3, 1994, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. Each incinerator that combusts wastes containing more than 10 percent sewage sludge (dry basis) produced by municipal sewage treatment plants, or each incinerator that charges more than 1000 kg (2205 lb) per day municipal sewage sludge (dry basis), that commences construction or modification after June 11, 1973, is subject to the provisions of this administrative regulation. The owner or operator of any sludge incinerator other than a multiple hearth, fluidized bed, or electric incinerator or any sludge incinerator equipped with a control device other than a wet scrubber, shall submit a plan for monitoring and recording incinerator and control device operation parameters to the U.S. EPA for approval. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart O, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, and as amended in the Federal Register, 59 FR 5107, February 3, 1994. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart O and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter (PM) appears at 40 CFR 60.152. The standard for monitoring of operations appears at 40 CFR 60.153.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:160. Standards of performance for primary copper smelters.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart P, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:110 which provides for the control of emissions from primary copper smelters. 401 KAR 59:110 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for primary copper smelters are governed by 40 CFR Part 60, Subpart P, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility in primary copper smelters. The affected facility is each dryer, roaster, smelting furnace, and copper converter that commences construction or modification after October 16, 1974.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:110, New primary copper smelters, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 15, 1994 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for primary copper smelters, 40 CFR Part 60, Subpart P. The federal NSPS regulation applies to each affected facility in primary copper smelters: dryer, roaster, smelting furnace, and copper convertor. Any affected facility that commences construction or modification after October 16, 1974, is subject to the provisions of this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6668 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy

which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart P, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. Each dryer, roaster, smelting furnace, and copper converter, in primary copper smelters that commences construction or modification after October 16, 1974, is subject to the provisions of this administrative regulation. A primary copper smelter is defined as any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart P, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart P, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter (PM) appears at 40 CFR 60.162. The standard for sulfur dioxide appears at 40 CFR 60.163, and the standard for visible emissions appears at 40 CFR 60.164. Monitoring of operations appears at 40 CFR 60.165.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:170. Standards of performance for primary zinc smelters.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart Q, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:115 which provides for the control of emissions from primary zinc smelters. 401 KAR 59:115 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for primary zinc smelters are governed by 40 CFR Part 60, Subpart Q, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility in primary zinc smelters. The affected facility is each roaster and sintering machine that commences construction or modification after October 16, 1974.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:115, New primary zinc smelters, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for primary zinc smelters, 40 CFR Part 60, Subpart Q. The federal NSPS regulation applies to each affected facility in primary zinc smelters: roaster and sintering machine. Any affected facility that commences construction or modification after October 16, 1974, is subject to the provisions of this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6668 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart Q, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. Each roaster and sintering machine in primary zinc smelters that commences construction or modification after October 16, 1974, is subject to the provisions of this administrative regulation. A primary zinc smelter is defined as any installation engaged in the production, or any intermediate process in the production of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart Q, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart Q, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter (PM) appears at 40 CFR 60.172. The standard for sulfur dioxide appears at 40 CFR 60.173, and the standard for visible emissions appears at 40 CFR 60.174. Monitoring of operations appears at 40 CFR 60.175.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:180. Standards of performance for primary lead smelters.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart R, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:120 which provides for the control of emissions from primary lead smelters. 401 KAR 59:120 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for primary lead smelters are governed by 40 CFR Part 60, Subpart R, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility in primary lead smelters. The affected facility is each sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, electric smelting furnace, and converter that commences construction or modification after October 16, 1974.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:120, New primary lead smelters, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for primary lead smelters, 40 CFR Part 60, Subpart R. The federal NSPS regulation applies to each affected facility in primary lead smelters: sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, electric smelting furnace, and converter. Any affected facility that commences construction or modification after October 16, 1974, is subject to the provisions of this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6669 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each

facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart R, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. Each sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, electric smelting furnace, and converter in primary lead smelters that commences construction or modification after October 16, 1974, is subject to the provisions of this administrative regulation. A primary lead smelter is defined as any installation or any intermediate process engaged in the production of lead from lead sulfide ore concentrates through the use of pyrometallurgical techniques. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart R, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart R, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter (PM) appears at 40 CFR 60.182. The standard for sulfur dioxide appears at 40 CFR 60.183, and the standard for visible emissions appears at 40 CFR 60.184. Monitoring of operations appears at 40 CFR 60.185.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:190. Standards of performance for primary aluminum reduction plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart S, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:125 which provides for the control of emissions from primary aluminum reduction plants. 401 KAR 59:125 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for primary aluminum reduction plants are governed by 40 CFR Part 60, Subpart S, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to potroom groups and anode bake plants in primary aluminum reduction plants that commences construction or modification after October 23, 1974.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland,

Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:125, New primary aluminum reduction plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for primary aluminum reduction plants, 40 CFR Part 60, Subpart S. The federal NSPS regulation applies to each affected facility in primary aluminum reduction plants: potroom groups and anode bake plants. Any affected facility that commences construction or modification after October 23, 1974, is subject to the provisions of this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6669 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart S, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. Each potroom group and anode bake plants in primary aluminum reduction plants that commences construction or modification after October 23, 1974, is subject to the provisions of this administrative regulation. A primary aluminum reduction plant is defined as any facility manufacturing aluminum by electrolytic reduction. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part

60, Subpart S, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart S, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for fluorides appear at 40 CFR 60.192, and the standard for visible emissions appears at 40 CFR 60.193. Monitoring of operations appears at 40 CFR 60.194.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:250. Standards of performance for coal preparation plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart Y, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:155 which provides for the control of emissions from new coal preparation plants. 401 KAR 59:155 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for coal preparation plants are governed by 40 CFR Part 60, Subpart Y, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities in coal preparation plants that commences construction or modification after October 24, 1974, and which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:155, New coal preparation plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for coal preparation plants, 40 CFR Part 60, Subpart Y. The federal NSPS regulation applies to all affected facilities that commences construction or modification after October 24, 1974, and includes any of the following affected facilities in coal preparation plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6671 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the

federal NSPS regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart Y, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for this source category. The U.S. EPA defines a coal preparation plant to mean any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: Breaking, crushing, screening, wet or dry cleaning, and thermal drying. The provisions of the federal NSPS regulation apply to all affected facilities that commences construction or modification after October 24, 1974. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart Y, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart Y, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.252. Monitoring of operations appear at 40 CFR 60.253, and test methods and procedures appear at 40 CFR 60.254.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:260. Standards of performance for ferroalloy production facilities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart Z, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:160 which provides for the control of emissions from ferroalloy production facilities. 401 KAR 59:160 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for ferroalloy production facilities are governed by 40 CFR Part 60, Subpart Z, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities that commences construction or modification after October 21, 1974: electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon,

silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:160, New ferroalloy production facilities, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for ferroalloy production facilities, 40 CFR Part 60, Subpart Z. The federal NSPS regulation applies to all affected facilities that commences construction or modification after October 21, 1974.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 55 FR 5212 (February 14, 1990).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart Z, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for this source category. The U.S. EPA includes among the ferroalloy production facilities any of the following: electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment. The provisions of the federal NSPS regulation apply to all affected facilities that commences construction or modification after October 21, 1974. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart Z, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart Z, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.262, and for carbon monoxide appear at 40 CFR 60.263. Emission monitoring appears at 60.264, the monitoring of operations appears at CFR 60.265, and test methods and procedures appear at 40 CFR 60.266.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:330. Standards of performance for stationary gas turbines.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart GG, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:019 which provides for the control of emissions from new stationary gas turbines. 401 KAR 59:019 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for stationary gas turbines are governed by 40 CFR Part 60, Subpart GG, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities: all new stationary gas turbines that commences construction, modification, or reconstruction after October 3, 1977. All stationary gas turbines with a heat input at peak load equal to or greater than ten and seven-tenths (10.7) gigajoules per hour, based on the lower heating value of the fuel fired, shall be subject to the provisions of this administrative regulation.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:019, New gas turbines, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for new stationary gas turbines, 40 CFR Part 60, Subpart GG. The federal NSPS regulation applies to all affected facilities that commences construction or modification after October 3, 1977.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 27016 (June 27, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart GG, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines stationary gas turbine to mean any simple cycle gas turbine or any gas turbine portion of a combined cycle steam and electric generating system that is not self-propelled. The provisions of the federal NSPS regulation apply to all affected facilities that commences construction or modification after October 3, 1977. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart GG, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart GG, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for nitrogen oxide emissions appear at 40 CFR 60.332. The standards for sulfur dioxide emissions appear at 40 CFR 60.333. Monitoring of operations appear at 40 CFR 60.334, and test methods and procedures appear at 40 CFR 60.335.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:340. Standards of performance for lime manufacturing plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR part 60, Subpart HH, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:171 which provides for the control of emissions from new lime manufacturing plants. 401 KAR 59:171 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for lime manufacturing plants are governed by 40 CFR Part 60, Subpart HH, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities: all new lime manufacturing plants that commences construction, modification, or reconstruction after May 3, 1977. A lime manufacturing plant is defined to be any plant which uses a rotary lime kiln to produce lime product from limestone by calcination.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W. Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:171, New lime plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for Lime Manufacturing Plants, 40 CFR Part 60, Subpart HH. The federal NSPS regulation applies to all affected facilities that commences construction or modification after May 3, 1977.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6675 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart HH, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines lime manufacturing plant to mean any plant which uses a rotary lime kiln to produce lime product from limestone by calcination. The provisions of the federal NSPS regulation apply to all affected facilities that commences construction or modification after May 3, 1977. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local

government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart HH, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart HH, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.342. Monitoring of emissions and operations appear at 40 CFR 60.343, and test methods and procedures appear at 40 CFR 60.344.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:370. Standards of performance for lead-acid battery manufacturing plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart KK, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:270 which provides for the control of emissions from new lead-acid battery manufacturing plants. 401 KAR 59:270 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for lead-acid battery manufacturing plants are governed by 40 CFR Part 60, Subpart KK, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each of the following lead-acid battery manufacturing plants that produces or has the design capacity to produce in one (1) day (twenty-four (24) hours) batteries containing an amount of lead equal to or greater than five and nine-tenths (5.9) Mg (six and five-tenths (6.5) tons), and that commences construction or modification after January 14, 1980: a grid casting facility, a paste mixing facility, a three-process operation facility, a lead oxide manufacturing facility, a lead reclamation facility, or any other lead-emitting operations.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W. Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:270, New lead-acid battery manufacturing plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for new lead-acid battery manufacturing plants, 40 CFR Part 60, Subpart KK. The federal NSPS regulation applies to affected facilities that commences construction or modification after January 14, 1980, including grid casting, paste mixing, three-process operation, lead oxide manufacturing, and lead reclamation facilities, and any other lead-emitting facilities used in the manufacture of lead-acid storage batteries.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6675 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart KK, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA applies this federal NSPS regulation to lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal or greater than 5.9 Mg (6.5 tons). The provisions of the federal NSPS regulation apply to all affected facilities that commences construction or modification after January 14, 1980. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart KK, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart KK, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for lead emissions appear at 40 CFR 60.372. Monitoring of emissions and operations appear at 40 CFR 60.373, and test methods and procedures appear at 40 CFR 60.374.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:380. Standards of performance for metallic mineral processing plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart LL, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:285 which provides for the control of emissions from new metallic mineral processing plants. 401 KAR 59:285 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for metallic mineral processing plants are governed by 40 CFR Part 60, Subpart LL, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each metallic mineral processing plant that commences construction, modification, or reconstruction after August 24, 1982. A metallic mineral processing plant means any combination of equipment that processes metallic ores into metallic concentrates containing one (1) or more of the following metals: aluminum, copper, gold, iron, lead, molybdenum, silver, titanium, tungsten, uranium, zinc and zirconium.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:285, New metallic mineral processing plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for new metallic mineral processing plants, 40 CFR Part 60, Subpart LL. The federal NSPS regulation applies to all affected facilities that commences construction or modification after August 24, 1982, and includes any combination of equipment that produces metallic mineral concentrates from ore.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6676 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The recordkeeping and reporting requirements appear at 40 CFR 60.385.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: here are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority

to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart LL, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The provisions of the federal NSPS regulation apply to all affected facilities that commences construction or modification after August 24, 1982. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart LL, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart LL, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.382. Monitoring of operations appears at 40 CFR 60.384, and test methods and procedures appear at 40 CFR 60.386.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:390. Standards of performance for automobile and light-duty truck surface coating operations.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart MM, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:181 which provides for the control of emissions from new automobile and light-duty truck surface coating operations. 401 KAR 59:181 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for automobile and light-duty truck surface coating operations are governed by 40 CFR Part 60, Subpart MM, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities: all new automobile and light-duty truck surface coating operations that commences construction, modification, or reconstruction after October 5, 1979. The provisions of this administrative regulation shall apply to the following affected facilities in an automobile or light-duty truck assembly plant: each prime coating operation, each guide coat operation, and each topcoat operation. Operations used to coat plastic body components or all-plastic automobile or light-duty truck bodies on separate coating lines shall be exempted from the provisions of this administrative regulation.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky,

41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:181, New automobile and light-duty truck coating operations, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for automobile and light-duty truck surface coating operations, 40 CFR Part 60, Subpart MM. The federal NSPS regulation applies to all affected facilities that commence construction or modification after October 5, 1979, and applies to each prime coating operation, guide coat operation, and topcoat operation, but not to the surface coating of plastic body components or all-plastic automobile and light-duty truck bodies on separate coating lines, at automobile and light-duty truck assembly plants.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 55 FR 51383 (December 13, 1990).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting and recordkeeping requirements appear at 40 CFR 60.395.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart MM, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA does, however, exempt the surface coating of plastic body components and of all-plastic vehicle bodies on separate coating lines at automobile and light-duty truck assembly plants. The provisions of the federal NSPS regulation apply to all affected facilities that commences construction or modification after October 5, 1979. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart MM, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S.

EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart MM, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for volatile organic compounds appear at 40 CFR 60.392. Performance test and compliance provisions appear st 40 CFR 60.393. Monitoring of emissions and operations appear at 40 CFR 60.394, and reference methods and procedures appear at 40 CFR 60.396.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:400. Standards of performance for phosphate rock plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart NN, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:265 which provides for the control of emissions from phosphate rock plants. 401 KAR 59:265 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for phosphate rock plants are governed by 40 CFR Part 60, Subpart NN, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities that commences construction or modification after September 21, 1979, and are used in phosphate rock plants which have a maximum plant production capacity greater than three and six-tenths (3.6) megagrams per hour (four (4) tons per hour): dryers, calciners, grinders, and rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:265, New phosphate rock plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for phosphate rock plants, 40 CFR Part 60, Subpart NN. The federal NSPS regulation applies to the following affected facilities that commences construction or modification after September 21, 1979, and are used in phosphate rock plants which have a maximum plant production capacity greater than 3.6 megagrams per hour (four (4) tons per hour): dryers, calciners, grinders, and rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 21344 (May 17, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required

of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart NN, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines phosphate rock plant to mean any plant which produces or prepares phosphate rock product by any or all of the following processes: Mining, beneficiation, crushing, screening, cleaning, drying, calcining, and grinding. The provisions of the federal NSPS regulation apply to the following affected facilities that commences construction or modification after September 21, 1979, and are used in phosphate rock plants which have a maximum plant production capacity greater than 3.6 megagrams per hour (four (4) tons per hour): dryers, calciners, grinders, and rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart NN, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart NN, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.402. Monitoring of emissions and operations appear at 40 CFR 60.403, and test methods and procedures appear at 40 CFR 60.404.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:420. Standards of performance for ammonium sulfate manufacture.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart PP, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:255 which provides for the control of emissions from ammonium sulfate manufacturing units. 401 KAR 59:255 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for ammonium sulfate manufacture are governed by 40 CFR Part 60, Subpart PP, as

published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each ammonium sulfate dryer, that commences construction or modification after February 4, 1980, and is within an ammonium sulfate manufacturing plant in the caprolactam by-product, synthetic, or coke oven by-product sectors of the ammonium sulfate industry.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:255, New ammonium sulfate manufacturing units, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for ammonium sulfate manufacture, 40 CFR Part 60, Subpart PP. The federal NSPS regulation applies to each ammonium sulfate dryer that commences construction or modification after February 4, 1980, and is within an ammonium sulfate manufacturing plant in the caprolactam by-product, synthetic, or coke oven by-product sectors of the ammonium sulfate industry.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6676 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart PP, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The provisions of the federal NSPS regulation apply to each ammonium sulfate dryer that commences construction or modification after February 4, 1980, and is within an ammonium sulfate manufacturing plant in the caprolactam by-product, synthetic, or coke oven by-product sectors of the ammonium sulfate industry. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart PP, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart PP, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.422. Monitoring of operations appear at 40 CFR 60.423, and test methods and procedures appear at 40 CFR 60.424.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:440. Standards of performance for pressure sensitive tape and label surface coating operations.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart RR, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:300 which provides for the control of emissions from new pressure sensitive tape and label surface coating operations. 401 KAR 59:300 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for pressure sensitive tape and label surface coating operations are governed by 40 CFR Part 60, Subpart RR, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to all new pressure sensitive tape and label surface coating operations that commences construction, modification, or reconstruction after December 30, 1983. A coating line means any number or combination of adhesive, release, or precoating applicators, flashoff areas, and ovens which coat a continuous web, located between a web unwind station and a web rewind station, to produce pressure sensitive tape and label materials.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:300, New pressure sensitive tape and label surface coating operations, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to

afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for pressure sensitive tape and label surface coating operations, 40 CFR Part 60, Subpart RR. The federal NSPS regulation applies to all affected facilities that commences construction or modification after December 30, 1980.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 55 FR 51383 (December 13, 1990).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting requirements appear at 40 CFR 60.447.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart RR, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The provisions of the federal NSPS regulation apply to all affected facilities that commences construction or modification after December 30, 1980. The requirements in all the sections of the federal NSPS regulation apply to any affected facility which inputs to the coating process more than 45 Mg of volatile organic compounds (VOC) per twelve month period, while only some of the requirements of the regulation apply to facilities with smaller inputs. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart RR, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart RR, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for volatile organic compound emissions appear at 40 CFR 60.442. Compliance provisions appear at 40 CFR 60.443. Performance test procedures appear at 40 CFR 444. Monitoring of operations and recordkeeping appear at 40 CFR 60.445 and test methods and procedures appear at 40 CFR 60.446.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:450. Standards of performance for industrial surface coating: large appliances.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart SS, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:201 which provides for the control of emissions from new large appliance surface coating operations. 401 KAR 59:201 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for large appliance surface coating operations are governed by 40 CFR Part 60, Subpart SS, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each surface coating operation in a large appliance surface coating line that commences construction, modification, or reconstruction after December 24, 1980. Coating operations at manufacturers of the following metal products shall be subject to the provisions of this administrative regulation: ranges, ovens (conventional and microwave), refrigerators, freezers, washers, dryers, dishwashers, water heaters, and trash compactors.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:201, New large appliance coating operations, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for large appliance surface coating operations, 40 CFR Part 60, Subpart SS. The federal NSPS regulation applies to all affected facilities that commences construction or modification after December 24, 1980.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 55 FR 51383 (December 13,1990).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting and recordkeeping requirements appear at 40 CFR 60.455.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that

sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart SS, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines a large appliance product to mean any organic surface-coated metal range, oven, microwave oven, refrigerator, freezer, washer, dryer, dishwasher, water heater, or trash compactor manufactured for household, commercial, or recreational use. The provisions of the federal NSPS regulation apply to all affected facilities that commences construction or modification after December 24, 1980. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart SS, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart SS, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for volatile organic compounds appear at 40 CFR 60.452. Performance test and compliance provisions appear at 40 CFR 60.453. Monitoring of emissions and operations appear at 40 CFR 60.454 and test methods and procedures appear at 40 CFR 60.456.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:460. Standards of performance for metal coil surface coating.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart TT, 42 USC 7411

STATUTORY AUTHORITY: KRS 24.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:221 which provides for the control of emissions from new metal coil surface coating operations. 401 KAR 59:221 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for metal coil surface coating operations are governed by 40 CFR Part 60, Subpart TT, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to all new metal coil surface coating operations that commences construction, modification, or reconstruction after January 5, 1981. A metal coil surface coating operation is defined to be an application system used to apply an organic coating to the surface of any continuous metal strip with thickness of 0.15 of a millimeter (0.006 inch) or more that is packaged in a roll or coil. Compliance in limiting volatile organic compound emissions can be achieved by any of four (4) approaches for each affected facility.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:221, New metal coil coating operations, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for metal coil surface coating operations, 40 CFR Part 60, Subpart TT. The federal NSPS regulation applies to all affected facilities that commences construction or modification after January 5, 1981.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 56 FR 20497 (May 3, 1991).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting and recordkeeping requirements appear at 40 CFR 60.465.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart TT, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines a metal coil surface coating operation as the application system used to apply an organic coating to the surface of any continuous metal strip with thickness of fifteen hundredths of a millimeter (0.15 mm) (0.006 inch) or more that is packaged in a roll or coil. The provisions of the federal NSPS regulation apply to all affected facilities that commences construction or modification after January 5, 1981. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart TT, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S.

EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart TT, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for volatile organic compounds appear at 40 CFR 60.462. The performance test and compliance provisions appear at 40 CFR 60.463. Monitoring of emissions and operations appear at 40 CFR 60.464 and test methods and procedures appear at 40 CFR 60.466.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:470. Standards of performance for asphalt processing and asphalt roofing manufacture.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart UU, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:042 which provides for the control of emissions from new asphalt processing and asphalt roofing manufacturing plants. 401 KAR 59:042 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for asphalt processing and asphalt roofing manufacturing plants are governed by 40 CFR Part 60, Subpart UU, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities that commences construction or modification after November 18, 1980: each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants; with the exception that the provisions of this administrative regulation shall only apply to an asphalt storage tank or blowing sill that processes or stores only nonroofing asphalts, if it commences construction or modification after May 28, 1981.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:042, New asphalt processing and asphalt roofing manufacturing plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for asphalt processing and asphalt roofing manufacture, 40 CFR Part 60, Subpart UU. The federal NSPS regulation applies to affected facilities that commences construction or modification after November 19, 1980, including grid casting, paste mixing, three-process operation, lead oxide manufacturing, and lead reclamation facilities, and any other lead-emitting facilities used in the manufacture of lead-acid storage batteries.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 27016 (June 27, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because

sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart UU, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA applies this federal NSPS regulation to the following affected facilities that commences construction after November 18, 1980: each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants; with the exception that the provisions of the federal NSPS regulation only apply to an asphalt storage tank or blowing sill that processes or stores only nonroofing asphalts, if it commences construction after May 28, 1981. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart UU, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart UU, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.472. Monitoring of operations appear at 40 CFR 60.473, and test methods and procedures appear at 40 CFR 60.474.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:480. Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart VV, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:305, which provides for the control of emissions in the synthetic organic chemicals manufacturing industry (SOCMI). 401 KAR 59:305 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry are governed by 40 CFR Part 60, Subpart VV, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for

those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility in the synthetic organic chemicals manufacturing industry that commences construction or modification after January 5, 1981.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:305, New synthetic organic chemical manufacturing industry equipment leaks, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for equipment leaks of volatile organic chemicals (VOC) in the synthetic organic chemical manufacturing industry, 40 CFR Part 60, Subpart VV. The federal NSPS regulation applies to all affected facilities that commences construction or modification after January 5, 1981.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 27016 (June 27, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The recordkeeping requirements appear at 40 CFR 60.486 and the reporting requirements appear at 40 CFR 60.487.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart VV, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines synthetic organic chemical manufacturing industry to mean the industry that produces, as intermediates or final products, one (1) or more of the chemicals listed in 40 CFR 60.489. The federal NSPS regulation applies to all affected facilities that commences construction or modification after January 5, 1981. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart VV, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compound (VOC) emissions from all facilities affected by 40 CFR Part 60, Subpart VV, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The general standards appear at 40 CFR 60.482-1. Standards for pumps in light liquid service appear at 40 CFR 60.482-2. Standards for compressors appear at 40 CFR 60.482-3. Standards for pressure relief devices in gas/vapor service appear at 40 CFR 60.482-4. Standards for sampling connection systems appear at 40 CFR 60.482-5. Standards for open-ended valves or lines appear at 40 CFR 60.482-6. Standards for valves in gas/vapor service in light liquid service appear at 40 CFR 60.482-7. Standards for pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors appear at 40 CFR 60.482-8. Standards for delay of repair appear at 40 CFR 60.482-9. Standards for closed vent systems and control devices appear at 40 CFR 60.482-10. Alternative standards for valves--allowable percentage of valves leaking appear at 40 CFR 60.483-1. Alternative standards for valves--skip period leak detection and repair appear at 40 CFR 60.483-2. Test methods and procedures appear at 40 CFR 60.485.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:490. Standards of performance for the beverage can surface coating industry.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart WW, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:216, which provides for the control of emissions from the beverage can surface coating industry. 401 KAR 59:216 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for the beverage can surface coating industry are governed by 40 CFR Part 60, Subpart WW, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities in beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation that commences construction, reconstruction, or modification after November 26, 1990.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:216, New beverage can coating operations, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 15, 1994 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for the beverage can surface coating industry, 40 CFR Part 60, Subpart WW. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after November 26, 1980, and includes each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 55 FR 51384 (December 13, 1990).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting and recordkeeping requirements appear at 40 CFR 60.495.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart WW, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA identifies affected facilities as each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation which commences construction, modification, or reconstruction after November 26, 1980. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart WW, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for volatile organic compound (VOC) emissions from all facilities affected by 40 CFR Part 60, Subpart WW, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for VOC emissions appear at 40 CFR 60.492. Monitoring of emissions and operations appears at 40 CFR 60.494, and test methods and procedures appear at 40 CFR 60.496.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:500. Standards of performance for bulk gasoline terminals.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR part 60, Subpart XX, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:099, which provides for the control of volatile organic compound (VOC) emissions from bulk gasoline terminals. 401 KAR 59:099 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for bulk gasoline terminals are governed by 40 CFR Part 60, Subpart XX, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each bulk gasoline terminal. The affected facility includes each gasoline facility which receives gasoline by pipeline, ship, or barge and has a gasoline throughput greater than 75,700 liters per day that commences construction or modification after December 17, 1980.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:099, New bulk gasoline terminals, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for bulk gasoline terminals, 40 CFR Part 60, Subpart XX. The federal NSPS regulation applies to all affected facilities that commences construction or modification after December 17, 1980, and includes the total of all the loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6678 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting and recordkeeping requirements appear at 40 CFR 60.505.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart XX, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines the affected facility as the total of all the loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks. The federal NSPS regulation applies to all affected facilities that commences construction or modification after December 17, 1980. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart XX, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart XX, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for VOC emissions from bulk gasoline terminals appear at 40 CFR 60.502. Test methods and procedures appear at 40 CFR 60.503.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:540. Standards of performance for the rubber tire manufacturing industry.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart BB, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:236, which provides for the control of emissions from the rubber tire manufacturing industry. 401 KAR 59:236 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for the rubber tire manufacturing industry are governed by 40 CFR Part 60, Subpart BBB, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility in rubber tire manufacturing plants that commences construction, modification, or reconstruction after January 20, 1983. The affected facility includes each undertread cementing operation, sidewall cementing operation, tread end cementing operation, bead cementing operation, green tire spraying operation, Michelin-A operation, Michelin-B operation, and Michelin-C automatic operation.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:236, New rubber tire manufacturing industry, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for the rubber tire manufacturing industry, 40 CFR Part 60, Subpart BBB. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after January 20, 1983, and includes each undertread cementing operation, sidewall cementing operation, tread end cementing operation, bead cementing operation, green tire spraying operation, Michelin-A operation, Michelin-B operation, and Michelin-C automatic operation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 38635 (September 19, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The recordkeeping requirements appear at 40 CFR 60.545 and the reporting requirements appear at 40 CFR 60.546.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart BBB so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines the affected facility to mean each undertread cementing operation, sidewall cementing operation, tread end cementing operation, bead cementing operation, green tire spraying operation, Michelin-A operation, Michelin-B operation, and Michelin-C automatic operation. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after January 20, 1983. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart BBB, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart BBB and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for VOC emissions appear at 40 CFR 60.542, and alternate standards for VOCs appear at 40 CFR 60.542a. Monitoring of operations appears at 40 CFR 60.544, and test methods and procedures appear at 40 CFR 60.547.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:560. Standards of performance for volatile organic compound (VOC) emissions from the polymer manufacturing industry.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart DDD, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation provides for the control of volatile organic compound (VOC) emissions from polymer manufacturing. Delegation of implementation and enforcement authority for this federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for VOC emissions from the polymer manufacturing industry are governed by 40 CFR Part 60, Subpart DDD, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility involved in the manufacture of polypropylene, polyethylene, polystyrene, or poly (ethylene terephthalate) that commences construction, reconstruction, or modification on or after applicability dates in 40 CFR 60.560(b) for specifically-identified affected facilities subject to this regulation.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for volatile organic compound (VOC) emissions from the polymer manufacturing industry, 40 CFR Part 60, Subpart DDD. The federal NSPS regulation applies to each affected facility involved in the manufacture of polypropylene, polyethylene, polystyrene, or poly (ethylene terephthalate) that commences construction, reconstruction, or modification on or after applicability dates in 40 CFR 60.560(b) for specifically-identified affected facilities subject to this regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 56 FR 12299 (March 22, 1991).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because

sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting and recordkeeping requirements appear at 40 CFR 60.565.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart DDD, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation, which requires uniformity for this source category. The U.S. EPA defines affected facilities as being those involved in the manufacture of polypropylene, polyethylene, polystyrene, or poly (ethylene terephthalate). Affected facilities may be inclusive of all equipment used in the manufacture of these polymers, beginning with raw materials preparation and ending with product storage, and cover all emissions emanating from such equipment. Applicability dates vary according to type of manufacturer. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart DDD, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart DDD, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for VOC emissions appear at 40 CFR 60.562-1 and 40 CFR 60.562-2. Monitoring requirements appear at 40 CFR 60.563, and test methods and procedures appear at 40 CFR 60.564.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:580. Standards of performance for flexible vinyl and urethane coating and printing.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart FFF, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:211, which provides for the control of emissions from flexible vinyl and urethane coating and printing. 401 KAR 59:211 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for flexible vinyl and urethane coating and printing are governed by 40 CFR Part 60, Subpart FFF, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a

New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each rotogravure printing line used to print or coat flexible vinyl or urethane products that commences construction, reconstruction, or modification after January 18, 1983.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:211, New flexible vinyl and urethane coating and printing operations, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for flexible vinyl and urethane coating and printing, 40 CFR Part 60, Subpart FFF. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after January 18, 1983, and includes each rotogravure printing line used to print or coat flexible vinyl or urethane products.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 49 FR 32848 (August 17, 1984).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting requirements appear at 40 CFR 60.585.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart FFF so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA identifies the affected facility as any rotogravure printing line used to print or coat flexible vinyl or urethane products. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after January 18, 1983. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart FFF, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart FFF, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for VOC emissions appear at 40 CFR 60.582. Test methods and procedures appear at 40 CFR 60.583 and monitoring of operations and recordkeeping requirements appear at 40 CFR 60.584.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:590. Standards of performance for equipment leaks of VOC in petroleum refineries.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart GGG, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:049, which provides for new petroleum refinery equipment leaks. 401 KAR 59:049 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for equipment leaks of VOC in petroleum refineries are governed by 40 CFR Part 60, Subpart GGG, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to affected facilities in a petroleum refinery that commences construction or modification after January 4, 1983. The affected facility includes equipment within a process unit and compressors.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:049, New petroleum refinery equipment leaks, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for equipment leaks of VOC in petroleum

refineries, 40 CFR Part 60, Subpart GGG. The federal NSPS regulation applies to all affected facilities that commences construction or modification after January 4, 1983, and includes the equipment within a process unit and compressors.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 49 FR 22606 (May 30, 1984).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. Reporting requirements appear at 40 CFR 60.604.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart GGG, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA includes as an affected facility any equipment within a process unit and a compressor. This federal regulation applies to all affected facilities that commences construction or modification after January 4, 1983. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart GGG, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart GGG, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS, which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for VOC emissions appear at 40 CFR 60.592. Exceptions appear at 40 CFR 60.593.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:600. Standards of performance for synthetic fiber production facilities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart HHH, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:280, which provides for the control of emissions from synthetic fiber production facilities. 401 KAR 59:280 is repealed in Section 4 of this administrative regulation. Delegation

of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for synthetic fiber production facilities are governed by 40 CFR Part 60, Subpart HHH, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each synthetic fiber production facility. The affected facility includes each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year and that commences construction or reconstruction after November 23, 1982.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:280, New synthetic fiber production facilities, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for synthetic fiber production facilities, 40 CFR Part 60, Subpart HHH. The federal NSPS regulation applies to all affected facilities that commences construction or reconstruction after November 23, 1982, and includes solvent-spun synthetic fiber processes that produce more than 500 megagrams of fiber per year.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 55 FR 51384 (December 13, 1990).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The reporting requirements appear at 40 CFR 60.604.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: here are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart HHH, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines an affected facility to mean each solvent-spun synthetic fiber process that produces more

than 500 megagrams of fiber per year. The federal NSPS regulation applies to all affected facilities that commences construction or reconstruction after November 23, 1982. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart HHH, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart HHH, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for VOC emissions appear at 40 CFR 60.602. Performance test and compliance provisions appear at 40 CFR 60.603.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:620. Standards of performance for petroleum dry cleaners.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart JJJ, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:242, which provides for the control of emissions from new petroleum dry cleaning plants. 401 KAR 59:242 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for petroleum dry cleaners are governed by 40 CFR Part 60, Subpart JJJ, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than thirty-eight (38) kilograms (eighty-four (84) pounds). The affected facility includes petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks that commences construction or modification after December 14, 1982.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:242, New petroleum dry cleaning plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color,

national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for petroleum dry cleaners, 40 CFR Part 60, Subpart JJJ. The federal NSPS regulation applies to all affected facilities that commences construction or modification after December 14, 1982, and includes any petroleum solvent dry cleaning dryer, washer, filter, still, or settling tank.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 50 FR 49026 (November 27, 1985).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. Recordkeeping requirements appear at 40 CFR 60.625.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart JJJ so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines petroleum dry cleaners to mean any of the following affected facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 38 kilograms (84 pounds): petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks. The federal NSPS regulation applies to all affected facilities that commences construction or modification after December 14, 1982. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart JJJ, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart JJJ, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for VOC emissions appear at 40 CFR 60.622. Test methods and procedures appear at 40 CFR 60.624.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:630. Standards of performance for equipment leaks of VOC from onshore natural gas processing plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart KKK, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:295, which provides for the control of emissions from onshore natural gas processing plants. 401 KAR 59:295 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for equipment leaks of VOC from onshore natural gas processing plants are governed by 40 CFR Part 60, Subpart KKK, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility in onshore natural gas processing plants. The affected facility includes a compressor in VOC service or in wet gas service and the group of all equipment except compressors that commences construction, reconstruction, or modification after January 20, 1984.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:295, New onshore natural gas processing plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for equipment leaks of VOC from onshore natural gas processing plants, 40 CFR Part 60, Subpart KKK. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after January 20, 1984, and includes a compressor in VOC service or in wet gas service and the group of all equipment except compressors within a process unit.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 51 FR 2702 (January 21, 1986).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The recordkeeping requirements appear at 40 CFR 60.635 and the reporting requirements appear at 40 CFR 60.636.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so

that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart KKK, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after January 20, 1984, and includes a compressor in VOC service or in wet gas service and the group of all equipment except compressors within a process unit. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart KKK, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compound (VOC) emissions from all facilities affected by 40 CFR Part 60, Subpart KKK, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The general standards appear at 40 CFR 60.632. Exceptions appear at 40 CFR 60.633 and alternative means of emission limitation appear at 40 CFR 60.634.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:640. Standards of performance for onshore natural gas processing: SO_2 emissions.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart LLL, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:295, which provides for the control of emissions from onshore natural gas processing plants. 401 KAR 59:295 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for onshore natural gas processing: SO_2 emissions are governed by 40 CFR Part 60, Subpart LLL, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility at an onshore natural gas processing plant located on land and including each facility located on shore which processes natural gas produced from either onshore or offshore wells. The affected facility includes each sweetening unit and each sweetening unit followed by a sulfur recovery unit that commences construction or modification after January 20, 1984.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8,

Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:295, New onshore natural gas processing plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for sulfur dioxide emissions from onshore natural gas processing, 40 CFR Part 60, Subpart LLL. The federal NSPS regulation applies to all affected facilities that commences construction or modification after January 20, 1984, and includes each sweetening unit, and each sweetening unit followed by a sulfur recovery unit.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6660 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. The recordkeeping and reporting requirements appear at 40 CFR 60.647.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart LLL, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines affected facility to mean each sweetening unit, and each sweetening unit followed by a sulfur recovery unit. The federal NSPS regulation applies to all affected facilities that commences construction or modification after January 20, 1984. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart LLL, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of sulfur dioxide emissions from all facilities affected by 40 CFR Part 60, Subpart LLL, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for sulfur dioxide emissions appear at 40 CFR 60.642. Test methods and procedures appear at 40 CFR 60.644 and monitoring of emissions and operations appears at 40 CFR 60.646.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:680. Standards of performance for wool fiberglass insulation manufacturing plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR part 60, Subpart PPP, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:290, which provides for the control of emissions from wool fiberglass insulation manufacturing plants. 401 KAR 59:290 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for wool fiberglass insulation manufacturing plants are governed by 40 CFR Part 60, Subpart PPP, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each rotary spin wool fiberglass insulation manufacturing line that commences construction, reconstruction, or modification after February 7, 1984.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:290, New wool fiberglass insulation manufacturing plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for wool fiberglass insulation manufacturing plants, 40 CFR Part 60, Subpart PPP. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after February 7, 1984, and includes each rotary spin wool fiberglass insulation manufacturing line.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6680 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. Recordkeeping and reporting requirements appear at 40 CFR 60.684.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part

of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR Part 60, Subpart PPP, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA determines the affected facility to mean each rotary spin wool fiberglass insulation manufacturing line. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after February 7, 1984. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart PPP, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR Part 60, Subpart PPP, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.682. Monitoring of operations appears at 40 CFR 60.683, and test methods and procedures appear at 40 CFR 60.685.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:700. Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart RRR, 42 USC 7411, Federal Register, 58 FR 45962-45973, August 31, 1993

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation provides for the control of volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes. Delegation of implementation and enforcement authority for this federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes are governed by 40 CFR Part 60, Subpart RRR, as published in the Federal Register, 58 FR 45962-45973, August 31, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that is a reactor process or combination of reactor process and recovery system that produces a chemical listed in 40 CFR 60.707 as a product, co-product, by-product, or intermediate and that commences construction, reconstruction, or modification on or after June 29,1990.

Section 3. Availability of Information. (1) Copies of the Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes, 40 CFR Part 60, Subpart RRR. The federal NSPS regulation applies to each affected facility that is part of a process unit that produces any of the chemicals listed in 40 CFR 60.707 as a product, co-product, by-product, or intermediate and that commences construction, reconstruction, or modification after June 29, 1990.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 58 FR 45962 (August 31, 1993).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for permits. Reporting and recordkeeping requirements appear at 40 CFR 60.705.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart RRR, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation, which requires uniformity for this source category. The U.S. EPA defines an affected facility as being a part of a process unit that produces any of the chemicals listed in 40 CFR 60.707 as a product, co-product, by-product, or intermediate and that commences construction, reconstruction, or modification after June 29, 1990. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart RRR, as published in the Federal Register, 58 FR 45962-45973, August 31, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of VOC emissions from all facilities affected by 40 CFR Part 60, Subpart RRR, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for total organic compound (TOC) and volatile organic compound (VOC) emissions appear at 40 CFR 60.702. Monitoring of emissions and operations appears at 40 CFR 60.703, and test methods and procedures appear at 40 CFR 60.704.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 60:730. Standards of performance for calciners and dryers in mineral industries.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart UUU, 42 USC 7411, Federal Register, 58 FR 40591, July 29, 1993

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for calciner and dryers in mineral industries. Delegation of implementation and enforcement authority for this federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for calciners and dryers in mineral industries are governed by 40 CFR Part 60, Subpart UUU, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, and as amended in the Federal Register, 58 FR 40591, July 29, 1993. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each calciner and dryer at a mineral processing plant that commences construction, reconstruction, or modification after April 23, 1986.

Section 3. Availability of Information. (1) Copies of the Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for calciners and dryers in mineral industries, 40 CFR Part 60, Subpart UUU. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after April 23, 1986.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 58 FR 40591 (July 29, 1993).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the

federal NSPS regulation. Affected facilities are required to apply for permits. The recordkeeping and reporting requirements appear at 40 CFR 60.735.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation 40 CFR Part 60, Subpart UUU, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity for this source category. The U.S. EPA defines "calciner" to mean the equipment used to remove combined (chemically bound) water or gases from mineral material through direct or indirect heating, including expansion furnaces and multiple hearth furnaces; and "dryer" to mean the equipment used to remove uncombined (free) water from mineral material through direct or indirect heating. The federal NSPS regulation applies to all affected facilities that commences construction, reconstruction, or modification after April 23, 1986. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart UUU, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, and as amended in the Federal Register, 58 FR 40591, July 29, 1993. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter from all facilities affected by 40 CFR Part 60, Subpart UUU, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter appear at 40 CFR 60.732. Monitoring of emissions and operations appears at 40 CFR 60.734, and test methods and procedures appear at 40 CFR 60.736.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 63:100. General provisions.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 63, Subpart A, 42 USC 7401, 7412, 7414, 7416, 7601, Federal Register, 59 FR 12430-12459, March 16, 1994

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes general provisions for national emission standards source categories. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. The general provisions for national emission standards source categories are governed by 40 CFR Part 63, Subpart A, as published in the Federal Register, 59 FR 12430-12459, March 16, 1994. Except for those authorities reserved in a federal NESHAP for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal NESHAP Source

Categories shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to owners and operators of an affected source that emits or has the potential to emit a hazardous air pollutant listed in 42 USC 7412(b) and regulated pursuant to 40 CFR Part 63.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal General Provisions regulation for National Emission Standards for Source Categories, 40 CFR Part 63, Subpart A, as published in the Federal Register, 59 FR 12430-12459, March 16, 1994. The federal General Provisions regulation applies to owners or operators who are subject to the provisions under 40 CFR Part 63, except when otherwise specified in a particular subpart or in a relevant standard. The procedures and requirements in this administrative regulation implement all National Emission Standards for Hazardous Air Pollutants (NESHAP) under the Clean Air Act, as amended November 15, 1990. The purpose of the federal NESHAP regulation is to establish the applicability of the standards to the affected sources.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 59 FR 12430-12459, March 16, 1994.

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal General Provisions regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal General Provisions regulation. The recordkeeping and reporting requirements appear at 40 CFR Part 63.10.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NESHAP General Provisions regulation (40 CFR Part 63, Subpart A), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal General Provisions regulation, 40 CFR Part 63, Subpart A, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NESHAP regulation for affected source categories.

TIERING: Was tiering applied? No. The provisions of this administrative regulation shall apply as stated in item (1) of this Regulatory Impact Analysis. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of

local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 112(b) of the Clean Air Act (42 USC 7401 et seq.), mandates the U.S. EPA to promulgate standards for emissions of hazardous air pollutants. The federal General Provisions regulation (40 CFR Part 63, Subpart A) establishes general provisions, procedures, and requirements for affected sources subject to any standard, limitation, prohibition, or other federally enforceable requirement pursuant to 40 CFR Part 63. 42 USC 7412(l) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal General Provisions regulation contains general requirements for sources affected by 40 CFR Part 63, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart A), contains general procedures and criteria to implement emission standards for stationary sources that emit or have the potential to emit one or more of the 189 substances listed in 401 KAR 57:061 pursuant to Section 112(b) of the Clean Air Act. Sources subject to standards promulgated under 40 CFR Part 63 must comply with the requirements of the General Provisions, except when specific General Provisions are overridden by the standards. The provisions include administrative procedures related to applicability determinations (including new versus existing and area versus major sources), compliance extensions, and requests to use alternative means of compliance. In addition, general requirements related to compliance-related activities outline the responsibilities of owners and operators to comply with relevant emission standards and other requirements. The compliance-related provisions include requirements for compliance dates, operation and maintenance requirements, methods for determining compliance with standards, procedures for performance testing and monitoring, and reporting and recordkeeping requirements. Compliance with standards and maintenance requirements appear at 40 CFR 63.6.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NESHAP General Provisions regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 63:300. National emission standards for coke oven batteries.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 63, Subpart L, 42 USC 7401, 7412, 7414, 7416, 7601, Federal Register, 58 FR 57911-57935, October 27, 1993, Federal Register, 59 FR 1992, January 13, 1994

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes national emission standards for the control of emissions from coke oven batteries. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. The national emission standards for coke oven batteries are governed by 40 CFR Part 63, Subpart L, as published in the Federal Register, 58 FR 57911-57935, October 27, 1993, and as amended in the Federal Register, 59 FR 1992, January 13, 1994. Except for those authorities reserved in a federal NESHAP for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal NESHAP shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to owners and operators of coke oven batteries on and after the dates at 40 CFR 63.300.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower,

Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for coke oven batteries, 40 CFR Part 63, Subpart L, as published in the Federal Register, 58 FR 57911-57935, October 27, 1993, and as amended in the Federal Register, 59 FR 1992, January 13, 1994. The federal NESHAP regulation applies to owners and operators of existing by-product coke oven batteries at a coke plant and to existing nonrecovery coke oven batteries at a coke plant on and after the following dates:

• December 31, 1995, for existing by-product coke oven batteries subject to emission limitations in 40 CFR 63.302(a)(1) or existing nonrecovery coke oven batteries subject to emission limitations in 40 CFR 63.303(a);

• January 1, 2003, for existing by-product coke oven batteries subject to emission limitations in 40 CFR 63.302(a)(2);

• November 15, 1993, for existing by-product and nonrecovery coke oven batteries subject to emission limitations in 40 CFR 63.304(b)(1) or 40 CFR 63.304(c);

• January 1, 1998, for existing by-product coke oven batteries subject to emission limitations in 40 CFR 63.304(b)(2) or 40 CFR 63.304(b)(7); and

• January 1, 2010, for existing by-product coke oven batteries subject to emission limitations in 40 CFR 63.304(b)(3) or 40 CFR 63.304(b)(7).

The provisions for new sources in 40 CFR 63.302(b), 63.302(c), and 63.303(b) apply to each greenfield coke oven battery and to each new or reconstructed coke oven battery at an existing coke plant if the coke oven battery results in an increase in the design capacity of the coke plant as of November 15, 1990, (including any capacity qualifying under 40 CFR 63.304(b)(6), and the capacity of any coke oven battery subject to a construction permit on November 15, 1990, that commences operation before October 27, 1993. The provisions of this administrative regulation apply to each brownfield coke oven battery, each padup rebuild, and each cold-idle coke oven battery that is restarted. The provisions of 40 CFR 63.304(b)(2)(i)(A) and 63.304(b)(3)(i) apply to each foundry coke producer as follows:

• A coke oven battery subject to 40 CFR 63.304(b)(2)(i)(A) or 63.304(b)(3)(i) must be a coke oven battery that on January 1, 1992, was owned or operated by a foundry coke producer; and

• A coke oven battery owned or operated by an integrated steel producer on January 1, 1992, and listed in section 63.300, that was sold to a foundry coke producer before November 15, 1993, shall be deemed for the purposes of 63.300(d)(1) to be owned or operated by a foundry coke producer on January 1, 1992.

The emission limitations set forth in this administrative regulation shall apply at all times except during a period of startup, shutdown, or malfunction. After October 28, 1992, rules of general applicability promulgated under section 112 of the Act, including the General Provisions, may apply to coke ovens provided that the topic covered by such a rule is not addressed in this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the final rulemaking for this federal NESHAP source category in the Federal Register, 58 FR 57911-57935, October 27, 1993, and as amended in the Federal Register, 59 FR 1992, January 13, 1994.

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NESHAP regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NESHAP regulation. Affected facilities are required to apply for construction and operating permits. The recordkeeping and reporting requirements appear at 40 CFR 63.311.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NESHAP regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NESHAP regulation, 40 CFR Part 63, Subpart L, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NESHAP regulation.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NESHAP regulation without change, which requires uniformity for all affected sources. The provisions of this administrative regulation shall apply as stated in item (1) of this Regulatory Impact Analysis. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local

government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 112(b) of the Clean Air Act (42 USC 7401 et seq.), mandates the U.S. EPA to promulgate standards for emissions of hazardous air pollutants. Under Section 112(d)(8), the U.S. EPA must promulgate standards based on maximum achievable control technology (MACT) for coke oven batteries. Existing coke oven batteries must comply with the MACT standards by December 31, 1995. To receive a deferral of the compliance date until the year 2020, the owner or operator must achieve short-term emission limitations and, in addition, by January 1, 1998, the battery must meet lowest achievable emission rate (LAER), as defined in Section 171 of the Act. The federal NESHAP regulation which implements this mandate is found in 40 CFR Part 63, Subpart L, as published in the Federal Register, 58 FR 57911-57935, October 27, 1993, and as amended in the Federal Register, 59 FR 1992, January 13, 1994. 42 USC 7412(l) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to states.

2. State compliance standards. The federal NESHAP regulation contains compliance standards for the control of emissions from all sources affected by 40 CFR Part 63, Subpart L and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NESHAP which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for by-product coke oven batteries, nonrecovery coke oven batteries, compliance date extensions, alternative standards for coke oven doors equipped with sheds, work practice standards, standards for bypass/bleeder stacks, and for collecting mains appear from 40 CFR 63.302 to 40 CFR 63.308. Appendix A to Part 63 is amended by adding Test Method 303 for visible emissions (VE) from by-product coke oven batteries; and Test Method 303A for VE from nonrecovery coke oven batteries.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NESHAP regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 63:320. National perchloroethylene air emission standards for dry cleaning facilities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 63, Subpart M, 42 USC 7412, Federal Register, 58 FR 49376-49380, September 22, 1993, Federal Register 58 FR 66289, December 20, 1993

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation provides for the control of emissions from perchloroethylene dry cleaning systems. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. The national emission standards for perchloroethylene dry cleaning facilities are governed by 40 CFR Part 63, Subpart M, as published in the Federal Register, 58 FR 49376-49380), September 22, 1993), and as amended in the Federal Register, 58 FR 66289, December 20, 1993. Except for those authorities reserved in a federal NESHAP for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal NESHAP Source Categories shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the owner or operator of each dry cleaning facility that uses perchloroethylene. All coin-operated dry cleaning machines are not subject to the provisions of this administrative regulation.

Section 3. Availability of Information. (1) Copies of the Federal Register (FR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 15, 1994 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed regulation will be conducted on July 26,

1994, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for perchloroethylene dry cleaning facilities, 40 CFR Part 63, Subpart M, as published in the Federal Register, 58 FR 49376-49380, September 22, 1993, and as amended in the Federal Register, 58 FR 66289, December 20, 1993. The federal NESHAP regulation applies to owners or operators of each dry cleaning facility that uses perchloroethylene. All coin-operated dry cleaning machines are not subject to the provisions of this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 58 FR 49376 (September 22, 1993), as amended at 58 FR 66289 (December 20, 1993).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NESHAP regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NESHAP regulation. Affected facilities are required to apply for permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NESHAP regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

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

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NESHAP regulation 40 CFR Part 63, Subpart M so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NESHAP regulation.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NESHAP regulation without change, which requires uniformity for this source category. The provisions of this administrative regulation shall apply to all affected facilities. Coin-operated dry cleaning facilities are exempt from this administrative regulation. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7412 mandates the U.S. EPA to promulgate standards of performance for emissions of hazardous air pollutants. The federal NESHAP regulation which implements this mandate is found in 40 CFR Part 63, Subpart M, as published in the Federal Register, 58 FR 49376-49380, September 22, 1993, and as amended in the Federal Register, 58 FR 66289, December 20, 1993. 42 USC 7412(l) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to states.

2. State compliance standards. The federal NESHAP regulation contains compliance standards for the control of perchloroethylene emissions from all dry cleaning facilities affected by 40 CFR Part 63, Subpart M, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NESHAP, which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for perchloroethylene emissions appear at 40 CFR 63.322. Test methods and procedures appear in 40 CFR 63.323.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter

requirements or additional responsibilities or requirements beyond those required by the federal NESHAP regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board

704 KAR 20:670. Kentucky teaching certificates.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.028, requires teacher education institutions be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the Kentucky certification to be issued for classroom teaching positions.

Section 1. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed an approved preparation program and assessments corresponding to the certificate identified in Section 2 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

(4) Each subsequent five (5) year renewal shall require completion of requirements outlined in 704 KAR 20:020 and 704 KAR 20:045.

Section 2. Grade Levels and Specializations. Preparation for all certificates shall ensure that teachers have the knowledge and skills for the instruction of all children including gifted children and those with disabilities, are proficient in the use of technology and in the instruction for multiage and multiability grouping, and have knowledge and skills to implement the goals for the schools of the Commonwealth specified in KRS 158.6451. Teaching certificates shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(1) Interdisciplinary early childhood education, birth to primary;

(2) Elementary school: primary through grade five (5) with one (1) academic emphasis to be selected from:

(a) English and communications;

(b) Fine arts and humanities;

(c) Mathematics;

(d) Science; or

(e) Social and behavioral studies;

(3)(a) Middle school: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:

1. English and communications;

2. Mathematics;

3. Science; or

4. Social studies;

(4) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following specializations:

(a) English;

(b) Mathematics;

(c) Social studies;

(d) Biological science; or

(e) Physical science;

(5) Grades five (5) through twelve (12) with one (1) or more of the following specializations:

(a) Agriculture;

(b) Business and marketing education;

(c) Home economics; or

(d) Industrial technology;

(6) All grade levels with one (1) or more of the following specialties:

(a) Art;

(b) A foreign language;

(c) Health;

(d) Physical education;

(e) Music; or

(f) School media librarian;

(7) Teaching children at all levels, including preschool, with the following disabilities:

(a) Learning and behavior disorders;

(b) Moderate and severe disabilities;

(c) Hearing impaired;

(d) Visually impaired; or

(e) Communication disorders;

(8) Endorsements to certificates identified in subsections (1) through (7) of this section for the following:

(a) Computer science;

(b) English as second language;

(c) Gifted education;

(d) Driver education; or

(e) Reading and writing;

(9) Candidates who hold one (1) of the certificates listed above may qualify for additional certification by successfully completing the corresponding assessments.

Section 3. New Teacher Standards for Preparation and Certification. The approved program of preparation for each certification shall be designed to prepare candidates to teach children, including children from culturally diverse backgrounds, and manage tasks identified in the following teacher performance standards:

(1) New Teacher Standard I, designs and plans instruction. The teacher designs and plans instruction and learning climates that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(2) New Teacher Standard II, creates and maintains learning climates. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(3) New Teacher Standard III, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(4) New Teacher Standard IV, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(5) New Teacher Standard V, reflects and evaluates teaching and learning. The teacher reflects on and evaluates specific teaching and learning situations and programs;

(6) New Teacher Standard VI, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues,

parents, and other community agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge; and

(7) New Teacher Standard VII, engages in professional development. The teacher evaluates his overall performance with respect to modeling and teaching Kentucky's learning goals established in KRS 158.6451, refines the skills and processes necessary, and implements a professional development plan.

Section 4. (1) The provisions for the issuance of teaching certificates for each grade level and for each specialization identified in this administrative regulation shall become effective for all students admitted to the specific program of preparation beginning with the academic year following the establishment of the assessments for the particular certification by the Education Professional Standards Board.

(2) Candidates admitted prior to the effective date of admission to the new program shall complete the program by September 1 of the fourth year of the effective date of the new program.

(3) Candidates who fail to complete the program by the announced deadline date and do not apply for the certification by September 1 of the following academic year shall be required to qualify for the certification identified in this administrative regulation.

(4) The Education Professional Standards Board shall communicate to the Kentucky colleges and universities approved for such programs the effective date for admission to each new program identified in this administrative regulation and the date by which a candidate shall complete the former program. Colleges and universities shall take adequate steps to inform candidates in these programs regarding the deadline dates.

DANIEL GREENE, Chair

APPROVED BY AGENCY: June 15, 1994

FILED WITH LRC: June 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on July 28, 1994, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 23, 1994, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Roland Goddu, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, (502)564-4606.

REGULATORY IMPACT ANALYSIS

Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Approximately 5,000 individuals apply for initial teacher certification annually, 178 school districts and 25 institutions of higher education.

(a) Direct and indirect costs or savings to those affected:

1. First year: Two certification categories will be certification programs of preparation implemented the first year. Institutions offering will have costs associated with developing and providing the corresponding programs. Candidates will have tuition and assessment costs. School districts may experience savings since the new certificate categories are broader and allow flexibility in assignments.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Institutions of higher education must file revised programs for Education Professional Standards Board approval under the new standards. Candidates for certification must file applications and accompanying documentation.

(2) Effects on the promulgating administrative body: Office of Teacher Education and Certification will have the responsibility for communicating new certification categories, requirements, and standards to institutions of higher education, individuals and local school districts. Also, will be responsible for administering, issuing and keeping records on programs, certificates issued and assignments in schools.

(a) Direct and indirect costs or savings:

1. First year: Costs associated in communicating and administering new system and changes in reviewing applications and accompanying data and recordkeeping.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Office of Teacher Education and Certification will receive and process applications for program approval and certification, communicate their disposition and maintain data and records on programs and certificates approved and issued.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation establishes new categories of teaching certificates and achieves a considerable reduction in the total number of categories. This is pursuant to KRS 161.028 which directs the Education Professional Standards Board to reduce and streamline the certification system.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: N/A

TIERING: Is tiering applied? No. Certification requirements are uniformly applicable to all individuals.

LABOR CABINET
Department of Workers' Claims

803 KAR 25:035. Computation of apportionment and attorney's fees.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260

NECESSITY AND FUNCTION: House Bill 928 of the 1994 regular session of Kentucky General Assembly was passed as emergency legislation and went into effect when the Governor signed the bill on April 4, 1994. Possibly through inadvertence, the General Assembly deleted references to U.S. Decennial Life Tables in KRS 342.120(8)(b) and 342.320(1). These tables had been used previously in the computation of attorneys' fees and the apportionment of liability between employers and the Special Fund. A new method of computation was not provided in House Bill 928. The purpose of this regulation is to give the administrative law judges of the Department of Workers' Claims guidance with respect to the computation of attorneys' fees and the apportionment of benefits between the employers and the Special Fund, pursuant to the commissioner's authority under KRS 342.260.

Section 1. Computation of the Apportionment of Benefits Between the Employer and the Special Fund. Whenever an administrative law

judge is required to compute the apportionment of benefits between the employer and the Special Fund pursuant to KRS 342.120(8), if another method is not required by the statute, the portions shall be based on the life expectancies contained in the overall male or female mortality tables in the most recent available edition of the U.S. Decennial Life Tables. If the most recent edition of the U.S. Decennial Life Tables includes Kentucky tables, these tables shall be used. If it does not, the national tables shall be used.

Section 2. Computation of Attorneys' Fees. Whenever an attorney's fee is being computed by an administrative law judge pursuant to KRS 342.320, and the statute does not require the use of another method, the award on which the attorney's fee shall be based shall be as actuarially determined on past and future benefits according to the life expectancies contained in the overall male or female mortality tables in the most recent available edition of the U.S. Decennial Life Tables. If the most recent edition of the U.S. Decennial Life Tables includes Kentucky tables, those tables shall be used. If it does not, the national tables shall be used.

L. T. GRANT, Commissioner
APPROVED BY AGENCY: May 20, 1994
FILED WITH LRC: May 23, 1994 at 11 a.m.
PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m., on July 21, 1994. Individuals interested in attending this hearing shall notify this agency in writing by July 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Valerie L. Salven, General Counsel, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, KY 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven
(1) Type and number of entities affected: Workers' compensation claimants, employers, the Special Fund, and their attorneys. Over 10,000 formal applications for adjustment of claim are filed with the Department of Workers' Claims each year.
(a) Direct and indirect costs or savings to those affected:
1. First year: Since this regulation retains the computation method in effect prior to April 4, 1994, there will be no costs or savings.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: No change from pre-April, 1994.
(a) Direct and indirect costs or savings:
1. First year: None, except for costs associated with the promulgation of a new administrative regulation.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None known.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative method: Legislature did not specify an alternative method in House Bill 928. Therefore, previous computation method is being retained by administrative regulation since KRS 342.260(2) provides that all procedures under the workers' compensation law shall be as summary and simple as reasonably possible.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None
TIERING: Is tiering applied? Yes. Amount of Special Fund liability will depend upon the life expectancy of the claimant as well as the degree and type of injury. Attorneys' fees will also be tiered based upon the amount of the award, which in total disability cases will be based in part on the life expectancy of the claimant.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 1:011. Repeal of 806 KAR 1:010, 806 KAR 2:130, 806 KAR 3:180, and 806 KAR 14:040.

RELATES TO: 1994 Ky. Acts Ch. 358, 1994 Ky. Acts Ch. 92 §2, 1994 Ky. Acts Ch. 496 §6(1), 1994 Ky. Acts Ch. 424 §2(4)(d)
STATUTORY AUTHORITY: KRS 304.2-110.
NECESSITY AND FUNCTION: Similar language as found in 806 KAR 1:010, 806 KAR 2:130 and 806 KAR 3:180 was adopted respectively in 1994 Ky. Acts Ch. 358; 1994 Ky. Acts Ch. 92 §2; and 1994 Ky. Acts Ch. 496 §6(1). Therefore, these administrative regulations are redundant and should be repealed. The administrative regulation, 806 KAR 14:040 is contrary to the newly adopted legislation, 1994 Ky. Acts Ch. 424 §2(4)(d). Therefore, it should be repealed.

Section 1. 806 KAR 1:010, Liability self-insurance groups, is repealed.

Section 2. 806 KAR 2:130, Disclosure of information regarding examinations, is repealed.

Section 3. 806 KAR 3:180, Instructions for insurer financial statements, is repealed.

Section 4. 806 KAR 14:040, Insurable interests of employers, is repealed.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: June 10, 1994
FILED WITH LRC: June 14, 1994 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET), in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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. 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 five days prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on July 21, 1994, in order to receive

consideration. 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: Sharron S. Burton, Counsel, Department of Insurance, 215 West Main Street, P. O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

Need for the Proposed Regulation: The language in 806 KAR 1:010, 806 KAR 2:130, and 806 KAR 3:180 has been adopted by the legislature respectively in 1994 Ky. Acts ch. 358, 1994 Ky. Acts ch. 92 §2, 1994 Ky. Acts ch. 496 §6(1). Because the administrative regulations are repetitive of statutory language, they are no longer necessary and should be repealed. The language in 1994 Ky. Acts ch. 424 §2(4)(d) is contrary to 806 KAR 14:040. Therefore, the administrative regulation should be repealed.

(1) Type and number of entities affected: There are 5 liability self-insurance groups that have filed a certification of filings with the department. There are 1,452 life and health insurers and general lines insurers licensed to do business in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(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 no direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is to leave the administrative regulations in place. However, those administrative regulations are either unnecessary and repetitive of statutory language or contrary to statutory language. Therefore, the only appropriate solution is to repeal the administrative regulations.

(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:

TIERING: Is tiering applied? Tiering is not applicable since 806 KAR 1:010, 806 KAR 2:130, 806 KAR 3:180, and 806 KAR 14:040 are being repealed.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 46:010. Financial statements for liability self-insurance groups.

RELATES TO: 1994 Ky. Acts ch. 358

STATUTORY AUTHORITY: 1994 Ky. Acts ch. 358 §17(3), §23

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. 1994 Ky. Acts ch. 358 §17(3) provides that the Commissioner of Insurance shall promulgate administrative regulations concerning the filing of financial statements by liability self-insurance groups. Under 1994 Ky. Acts. ch. 358 §23, the commissioner may promulgate reasonable administrative regulations to properly administer this subtitle.

Section 1. Each liability self-insurance group shall submit to the commissioner a statement of financial condition in accordance with 1994 Ky. Acts ch. 358 §17. The financial statement shall include an actuarial opinion by a qualified actuary and supporting reserve study regarding reserves for claims incurred but not reported and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.

Section 2. (1) If a liability self-insurance group is not composed of governmental entities, it shall file its financial statements, as required by 1994 Ky. Acts ch. 358 §17, in accordance with Financial Accounting Standards Board Statement Number 60. The Financial Accounting Standards Board Statement Number 60, effective June 1982, is incorporated by reference and available for inspection and copying at the Kentucky Department of Insurance, Post Office Box 517, 215 West Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. (ET).

(2) If a liability self-insurance group is composed of governmental entities, it shall file its financial statements, as required by 1994 Ky. Act ch. 358 §17, in accordance with Financial Accounting Standards Board Statement Number 10. The Financial Accounting Standards Board Statement Number 10, effective November 1989, is incorporated by reference and available for inspection and copying at the Kentucky Department of Insurance, Post Office Box 517, 215 West Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. (ET).

Section 3. The financial statement filed by a liability self-insurance group shall be in the form of Appendix A.

APPENDIX A

(NAME OF LIABILITY SELF-INSURANCE GROUP)

FINANCIAL STATEMENTS AND SCHEDULES

(DATE)

WITH INDEPENDENT AUDITOR'S REPORT THEREON

- -

(NAME OF LIABILITY SELF-INSURANCE GROUP)

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Item (or schedule) Page

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AND PAGE NUMBERS HERE)

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INDEPENDENT AUDITOR'S REPORT

(ON AUDITOR'S LETTERHEAD AND
SIGNED AND DATED BY AUDITOR)

- -

(NAME OF LIABILITY SELF-INSURANCE GROUP)

Balance Sheets
(Dates covered by fiscal year)

Assets

(LIST ALL ITEMS MATERIAL TO THE GROUP'S FINANCIAL CONDITION)

Liabilities and Fund Balance

(LIST ALL ITEMS MATERIAL TO THE GROUP'S FINANCIAL CONDITION)

(Refer to notes, if applicable)

- -

(NAME OF LIABILITY SELF-INSURANCE GROUP)

Statements of Revenue and Expenses
(Dates covered by fiscal year)

Revenue

(LIST ALL ITEMS MATERIAL TO THE GROUP'S FINANCIAL CONDITION)

Expenses

(LIST ALL ITEMS MATERIAL TO THE GROUP'S FINANCIAL CONDITION)

(Refer to notes, if applicable)

- -

(NAME OF LIABILITY SELF-INSURANCE GROUP)

Statements of Changes in Fund Balance
(Dates covered by fiscal year)

Fund balance - beginning of year

Member contributions

Revenue over expenses

Fund balance - end of year

(Refer to notes, if applicable)

- -

(NAME OF LIABILITY SELF-INSURANCE GROUP)

Statements of Cash Flows
(Dates covered by fiscal year)

Cash flows from operating activities:

Revenue over expenses
Adjustments to reconcile revenue over expenses
(List items and amounts)

Net cash provided by operating activities

Cash flows from investing activities:
(List items and amounts)

Net cash used in investment activities

Cash flows from financing activities - members' capital contributions

Net increase in cash and cash equivalents

Cash and cash equivalents - beginning of year

Cash and cash equivalents - end of year

(Refer to notes, if applicable)

- -

(NAME OF LIABILITY SELF-INSURANCE GROUP)

Notes to Financial Statements
(Dates covered by fiscal year)

(List notes including any supplementary information required by Financial Accounting Standards Board Statement Number 60 or Government Accounting Standards Board Statement Number 10, whichever may be applicable to your liability self-insurance group).

- -

W. A. FRITTS, Deputy Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: June 10, 1994
FILED WITH LRC: June 14, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1994, at 10 a.m. (ET), in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 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. 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 five days prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on July 21, 1994, in order to receive consideration. 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: Sharron S. Burton, Counsel, Department of Insurance, 215 West Main Street, P. O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton
Need for the Proposed Administrative Regulation: 1994 Ky. Acts ch. 358 §17 provides that liability self-insurance groups shall file financial statements with the Department of Insurance. The liability self-insurance groups shall file the financial statements in accordance with guidelines as provided for in administrative regulations by the commissioner under 1994 Ky. Acts ch. 358 §17(3). The commissioner may promulgate administrative regulations as necessary to properly administer this subtitle under 1994 Ky. Acts ch. 358 §23.

(1) Type and number of entities affected: There are 5 liability self-insurance groups that have filed a certificate of filing with the Kentucky Department of Insurance.

(a) Direct and indirect cost or savings to those affected:

1. First year: Financial statements were already being filed by the liability self-insurance groups. Therefore, there is no direct or indirect

cost or savings.

2. Continued cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The reporting and paperwork requirements have not changed.

(2) Effects on the promulgating administrative body:

(a) Direct or indirect costs or savings:

1. First year: There are no costs or savings for the Department of Insurance.

2. Continued costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: These requirements have not changed.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The standards are the same for the liability self-insurance groups. The requirements have been given their own subtitle. Therefore, no alternatives were considered.

(5) Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None

TIERING: Tiering is not used since the proposed administrative regulation should apply to liability self-insurance groups equally.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 2:111. Repeal of 902 KAR 2:110 and 902 KAR 2:120.

RELATES TO: KRS 211.180, 214.010, 214.020, 333.130

STATUTORY AUTHORITY: KRS 214.460, 214.462

NECESSITY AND FUNCTION: 902 KAR 2:110, which defines reportable communicable diseases and sexually transmitted diseases which are transmissible through blood, and 902 KAR 2:120, standardized risk factor history form, are no longer required because KRS 214.460 and 214.462, the enabling statutes, have been repealed.

Section 1. 902 KAR 2:110, Reportable communicable diseases and sexually transmitted diseases which are transmissible through blood, is hereby repealed.

Section 2. 902 KAR 2:120, Standardized risk factor history form, is hereby repealed.

RICE C. LEACH, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: May 24, 1994

FILED WITH LRC: June 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1994, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by July 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Reginald Finger, M.D.

(1) Type and number of entities affected: Persons who donate and establishments which receive blood.

(a) Direct and indirect costs or savings to those affected: No effect due to repeal. Regulations never went into effect.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of promulgating new regulation.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: None anticipated.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative to repeal of regulations according to KRS Chapter 13A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed 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:

TIERING: Is tiering applied? No. Entities affected equally.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:626. Reimbursement of dental services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441.30, 447 Subpart B, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by 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. Definitions. 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 seventy-eight (78) percent of the median billed charge using 1993 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 shall 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. 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:

(1) Orthodontic consultation, seventy-seven (77) dollars, except that the fixed fee shall be thirty-eight (38) dollars and fifty (50) cents 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;

(2) Preauthorized early phase orthodontic services for moderately severe or severe handicapping malocclusion, $1,030 for orthodontists and $930 for general dentists:

(3) Preauthorized orthodontic services for moderately severe handicapping malocclusions, $1,375 for orthodontists and $1,250 for general dentists; and

(4) Preauthorized orthodontic services for severe handicapping malocclusions, $2,075 for orthodontists and $1,850 for general dentists.

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. Third-party Liability. Medicaid shall be the payor of last resort. Policy related to nonduplication of payments and third-party liability is shown in 907 KAR 1:005, Nonduplication of payments.

Section 7. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after June 1, 1994.

Section 8. 907 KAR 1:625E, Dental Services Reimbursement, is repealed.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: May 23, 1994

FILED WITH LRC: May 26, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 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; however, it should be noted that Medicaid payments to providers will be reduced by the amount of Medicaid savings.

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 and savings:

1. First year: $2.7 million (savings)

2. Continuing costs and savings: $2.7 million (savings)

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 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 1369a 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.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:631. Reimbursement of vision care services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40,

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

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the 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 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 seventy-eight (78) percent of the median billed charge using 1993 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 seventy-eight (78) percent of the median billed charge using 1993 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. 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 6. Third Party Liability. Medicaid shall be the payor of last resort. Policy related to nonduplication of payments and third-party liability is shown in 907 KAR 1:005, Nonduplication of payments.

Section 7. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after June 1, 1994.

Section 8. 907 KAR 1:630E, Vision care services reimbursement, is repealed.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: May 24, 1994

FILED WITH LRC: May 26, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 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; however, it should be noted that Medicaid payments to providers will be reduced by the amount of Medicaid savings.

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: $1.3 million (savings)

2. Continuing costs or savings: $1.3 million (savings)

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 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 June 7, 1994 Meeting

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 7, 1994 11 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 May 2, 1994 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Tom Smith, Gene Huff; Representatives Jim Bruce.

Guests: Eddie Mattingly, Jennifer Hays, Revenue Cabinet; Bill Pettus, Board of Embalmers & Funeral Directors; Dave Nicholas, Division of Occupations and Professions; Tom Bennett, John Phillips, Department of Fish and Wildlife; Jack A. Wilson, A. Leon Smothers, Ralph Schiefferle, John T. Smither, Natural Resources and Environmental Protection Cabinet; Jack Damron, Louis Smith, Brenda Priestly, Department of Corrections; David Garnett, Transportation Cabinet; Kevin Noland, Gary Faulkner, Neal Kingston, David Thurmond, Department of Education; Mike Sparrow, Sharon Vassallo, Carol Palmore, Margaret Miles, Rex Hunt, Dennis Langford, Labor Cabinet; Judith G. Walden, Department of Housing, Buildings and Construction; Karen Doyle, Mark Birdwhistell, Chuck Lambert, Adele Dickerson, Anita Moore, Ked Fitzpatrick, Marcie Rogers Beatty, Cabinet for Human Resources; Heather Harker, Dana Parker, Dr. Bobbie Beth Scoggins, Kentucky Commission on Deaf & Hard of Hearing; Greg Brotzge, Scott Paper; Dennis Conniff, McBrayer, McGinnis, Leslie & Kirkland; Mary Whitling, Appalachian Regional Healthcare; Carolyn Sturdivant; Elizabeth C. Sturdivant; Sara S. Nicholson, Nancy Galvagni, Kentucky Hospital Association; David Sauer, Ashland Petroleum Co.; Tom Marshall; John W. Brazel, Kentucky Chamber of Commerce; Charles Rose, Lizzie Rose; Billie Jean Shepherd, Helen Lewis, Bo Damien Lewis, Walter Lewis, Pauline Lewis, representing Ron Lewis #92519; Robin Horn, representing Charles Walker; Fred Bee; Ann Walker; Ted Bradshaw, Kentucky Optometric; Jerry Alleyne, Kentucky Education Association; Tom Fitzgerald, Kentucky Resources Council; Jim Scoggins, Interpreter; Norma Lewis, Interpreter; Clyde Caudill, KSBA; Sam Crawford.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines; Doug Huddleston.

The Subcommittee determined that the following administrative regulations, as amended, complied with statutory requirements:

Revenue Cabinet: Income Tax; Withholding

103 KAR 18:120. Security for compliance; bonds. Jennifer Hays and Eddie Mattingly were present to represent the Cabinet. This administrative regulation was amended to delete two definitions that are provided for by statute.

Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Mr. Damron was asked to explain what the Department had decided to do concerning the policy of assignment of Class A felons, specifically regarding the possibility of assignment to a half-way house. Mr. Damron responded that the amendments to this administrative regulation do not contain that provision, but that the Department is in the process of amending this administrative regulation to contain a sentence that exempts anyone convicted of a murder, complicity to commit murder, or aiding or abetting from the absolute ban on minimum security housing. Mr. Damron said this would be in compliance with the statutory authority given to the Commissioner to assign prisoners.

Chairman Kerr noted that there were several people present who had traveled quite a distance to be at the meeting, and asked if those people wanted to respond at this meeting, or if they could return when this amendment would actually be before the Subcommittee. All said they could return and asked that they be notified of the time. Ms. Anna Walker did briefly testify that she believes each person should be judged individually.

Mr. Damron pointed out that the administrative regulation would still provide that those convicted of kidnapping or sex offenses would not be eligible to be housed in a minimum security facility.

Department of Corrections: Office of the Secretary

The following administrative regulations from the Justice Cabinet, Department of Corrections, were amended for clarification and to comply with the drafting requirements of KRS Chapter 13A. Jack Damron, Louis Smith and Brenda Priestly were present to represent the Cabinet.

501 KAR 6:030. Kentucky State Reformatory.
501 KAR 6:050. Luther Luckett Correctional Complex.
501 KAR 6:060. Northpoint Training Center.
501 KAR 6:070. Kentucky Correctional Institution for Women.
501 KAR 6:120. Blackburn Correctional Complex.
501 KAR 6:140. Bell County Forestry Camp.

Labor Cabinet: Labor Standards; Wages and Hours

803 KAR 1:085. Fringe benefits. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements; (2) KRS 13A.220(4) format requirements: (3) KRS 13A.120(2)(e) deleting language that repeated or summarized statutory language; and (4) pursuant to KRS 13A.222(4)(d) & (e) the term "bona fide fringe benefits" was deleted from Section 6(1) and inserted in the definitions section.

Department of Housing, Buildings and Construction: Local Fire Departments

815 KAR 45:025 & E. Commission meetings and proceedings. This administrative regulation was amended in Section 2(1)(b) to correct a statutory citation.

Cabinet for Human Resources: Administration

900 KAR 1:070. Deaf and hard of hearing services. Billy K. Epling, President of the Bluegrass Interpreter Connection submitted written comments relating to: (1) state screening test to verify the qualifications of an individual designated to provide interpreter services; and (2) setting a minimum per hour rate for interpreter services.

Dr. Bobbie Beth Scroggins, Executive Director for the Commission on the Deaf and Hard of Hearing, responded to Ms. Epling's comments stating that both issues have been resolved with the Cabinet and the amendments to the administrative regulation reflect such agreement.

Subcommittee staff stated that representatives from the Commission on the Deaf and Hard of Hearing, and Cabinet officials, have worked very hard to reach agreement on the proposed amendments to this administrative regulation.

Subcommittee staff advised Subcommittee members of a statutory ambiguity relating to the Commission's oversight authority to regulate the compensation for interpreter services, versus the Cabinet's authority to establish rates and compensation for expenses: (1) KRS 163.510(4) establishes the Commission's duty to "oversee the provision of interpreter services to the deaf and hard of hearing and authorizes it to provide services if necessary"; while (2) KRS

344.500(5) provides that "the [Cabinet] appointing authority shall set the compensation for each day the interpreter is in attendance...."

The Subcommittee approved a motion to refer this issue to the Legislative Research Commission for further review.

Medicaid Services

907 KAR 1:013. Payments for hospital inpatient services. This administrative regulation was amended to: (1) include psychiatric hospitals with the medical surgery hospitals when determining base payment amounts based on bed size; (2) adjust payment for outpatient services to 140% of the medicaid per diem rate or the conversion rate; (3)(a) to the extent funds are available provide a supplemental payment to hospitals that did not receive the full medicaid rate, based on the amount hospitals would have received had they received the medicaid rate; and (b) provide for a pro-rata payment to hospitals if funds are not available to pay the full medicaid rate; and (5) include disproportionate share psychiatric hospitals under 100 beds in the $200,000 payment for acute care disproportionate share hospitals under 100 beds.

Cabinet personnel agreed to work with Subcommittee staff to bring its policies and procedures into compliance with KRS Chapter 13A. regarding the use of provider letters to implement policy.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Board of Embalmers and Funeral Directors

201 KAR 15:010. Definitions.

Board of Veterinary Examiners

201 KAR 16:020. Approved veterinary colleges.

Board of Occupational Therapy

201 KAR 28:041. Repeal of 201 KAR 28:040, 28:080, and 28:100.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:171. Deer hunting seasons.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Water Resources

401 KAR 4:060. Stream construction criteria.

Transportation Cabinet: Motor Vehicle Commission

605 KAR 1:200. Manufacture and sale of motor homes.

Department of Education: School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. In response to Representative Bruce's questions concerning the proposed amendments, Gary Faulkner, with the Department of Education, stated that the: (1) the administrative regulation was initially drafted following the Commission on Interscholastic Athletics' review of high school athletics in Kentucky; (2) State Board for Elementary and Secondary Education adopted many of the recommendations proposed by the Commission; (3) administrative regulation was subsequently amended with the hope that the Kentucky High School Athletic Association would agree with many of the Commission's recommendations; (4) State Board for Elementary and Secondary Education responded to Association member's concerns relating to Section 2(4) by amending this section after its public hearing. The amendments provide that: (a) member schools would be responsible for the distribution of net revenues from regional post-season tournament play; and (b) distribution would be based on a "shared approach" to be determined by the schools within that region playing that sport.

He added that a majority of the member schools of the Association have recently accepted proposed changes in the Association's constitution which mirror the proposed amendments to this administrative regulation.

Learning Results Services

703 KAR 4:090. Statewide assessment and accountability program; school building and local district appeal of performance judgements.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:010. Definitions.

815 KAR 20:070. Plumbing fixtures.

815 KAR 20:120. Water supply and distribution.

Cabinet for Human Resources: Department for Medicaid Services

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

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the July meeting, unless otherwise noted, upon request by the Subcommittee and agreed to by the promulgating agency:

Economic Development Cabinet: Department of Agriculture: Amusement Rides

302 KAR 16:080. Qualifications and inspection criteria for bungee (bungy) jumping of similar apparatus permit.

Livestock Sanitation

302 KAR 20:220. Pseudorabies: eradication and control.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Public Water Supply

401 KAR 8:010. Definitions for Title 401 Chapter 8.

401 KAR 8:020. Public and semipublic water supplies - general provisions.

401 KAR 8:040. Laboratory certification.

401 KAR 8:060. Variances and exemptions.

401 KAR 8:070. Public notification.

401 KAR 8:100. Design, construction and approval of facilities.

401 KAR 8:150. Disinfection and filtration.

401 KAR 8:200. Microbiological monitoring.

401 KAR 8:250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels.

401 KAR 8:300. Lead and copper.

401 KAR 8:400. Synthetic organic chemicals.

401 KAR 8:420. Volatile organic chemicals.

401 KAR 8:440. Special testing for unregulated inorganic and synthetic organic chemicals.

401 KAR 8:500. Disinfection by-products.

401 KAR 8:600. Secondary standards.

OTHER BUSINESS:

LABOR CABINET, Policies and Procedures: Special Fund, KRS 342.150

The following questions had been raised by the Subcommittee concerning Labor Cabinet policy on commutation of Workers' Compensation award to a lump sum:

(1) Whether a Cabinet policy existed that reduced lump sum payments for benefits to $20,000, if the present value of the lump sum distribution exceeded $20,000;

(2) If such a policy existed, the statutory authority for such a policy; and, whether it:

(a) was set out, or incorporated by reference, in an administrative regulation;

(b) complied with the provisions of:

1. KRS 342.150; and,

2. KRS 13A.100, 13A.120(6), and 13A.130.

Carolyn Sturdevant stated that she had: (1) wanted to have her award commuted to a lump sum, in order to have something to leave to her daughter; (2) called the Special Fund to discuss a lump sum settlement, and was told that: (a) her case was worth about $65.000; (b) the Fund would give her $20,000 or less in a lump sum payment; (c) the Fund had never settled for more than $20,000; (3) was later told, by the attorney for the Fund, that her case was actually worth about $30,000; (4) a limited income not exceeding $7,000, and received too much to qualify for state assistance programs, but not enough to live on.

Ms. Sturdevant stated that she believed the Fund should be governed by established rules and procedures, and that restricting a lump sum payment to $20,000 regardless of the actual value was improper.

Chairman Kerr stated that: (1) Ms. Sturdevant's award paid her $145 every two weeks; (2) her life expectancy of 35 years would result in a lifetime receipt of over $130,000; and (3) a settlement of her case would result in a lump sum payment of approximately $65,000.

Secretary Palmore apologized to Ms. Sturdevant if she felt she had been treated rudely by Cabinet personnel. She stated that the Cabinet: (1) did not have a rule or policy to reduce a lump sum payment, regardless of actual value, to $20,000; (2) would not have agreed to settle her case for $20,000; (3) the person with whom Ms. Sturdevant spoke does not have the authority to settle cases; (4) because of the Special Fund's cash flow problems, large cases have not been settled; (5) as an example of the Fund's cash flow problem, next year's receipts would total $110 million, while expenditures would exceed $145 million; (6) of the 11,000 or more cases that entered the system last year, only 78 post-award cases were settled, for an average settlement of $6,327; (7) an informal policy has existed that big cases would not be lump summed because to the Fund's cash flow problems; (8) over the last 7 months, the Cabinet has reviewed the issue of lump sum settlements, and has received a recommendation from the director of the Special Fund that no post-award settlements be made because of the cash flow problem; and, (9) the policy of the Cabinet was not that lump sum awards are reduced to $20,000, regardless of value; rather, the Cabinet policy has been that settlement, or commutation to a lump sum payment of the present value, the discounted value, is not made if the value of the lump sum payment exceeds $20,000.

In response to a question by Chairman Kerr, Secretary Palmore stated that the greatest amount in a settlement might have reached $18,000 or $19,000.

In response to questions by Ms. Sturdevant and Chairman Kerr, Secretary Palmore stated that: (1) the insurance company has a specified liability, and the Special Fund has a specified liability; (2) settlement by the Cabinet is with the claimant, not the insurance company; (3) an insurance company reimburses the Cabinet only for the portion of the liability it owed the claimant; (4) for post-1982 awards, the insurance company pays 100% of the bi-weekly award up-front until its liability is paid, after which the Special Fund pays 100% of the bi-weekly award to the extent of its liability; (5) for pre-1982 awards, the Special Fund would have issued the full amount of the check, and bill the insurance company for its portion of the liability every quarter; (6) for the Special Fund to be involved means that the: (a) administrative law judge had determined that there was a pre-existing dormant condition that had been brought into disabling reality by the accident, and that the Special Fund was assessed for part of the liability; (b) money for the award is derived from the Special Fund assessed against all insurance companies; and (c) the insurance company that covered the employer is billed quarterly for its portion of the claimant's payment.

Chairman Kerr stated that KRS 342.150 provided that, upon application of all parties, if the administrative law judge determined that it was in the best interests of all parties and that commutation would not result in an undue risk of overpayment by the employer or his insure, commutation of future compensation payments to a lump sum award could be made. In response to a question by Chairman Kerr, Secretary Palmore stated that, unless circumstances mandated that a lump sum award be made, no future post-award lump sum settlements be made because of the Special Fund's cash flow problems.

Senator Smith extended his apologies to Ms. Sturdevant for the treatment she had stated she had received, and stated that the workers' compensation issue had been discussed extensively during the 1994 Regular Session of the General Assembly. He added that: (1) only four insurance underwriters remained in the state because of the assessments made by the Special Fund; (2) competitive state fund established by the General Assembly at its 1994 Regular Session begins operation in 1995, at which time assessments would end; (3) the system is financially broken; and (4) both claimants and employers have been penalized by and are victims of the current system. He added that: (1) to lump sum all awards would bankrupt the system, and that it already is operating at a deficit; and, (2) the money is not obtained from the general fund or taxes, but from employers, and is a cost of doing business.

The Subcommittee approved a motion by Senator Huff that the Legislative Research Commission be asked to refer the issue of whether KRS 342.150 be reviewed to determine whether the commutation of an award to a lump sum payment be contingent upon application by all parties, or whether the administrative law judge should be authorized to commute an award to a lump sum, if it is determined that circumstances warrant it, whether all parties agree and apply for commutation of an award to a lump sum.

In response to a question by Chairman Kerr, it was stated that an award could not be assigned.

National Association on Administrative Rules Review

The Subcommittee approved Chairman Kerr's suggestion that the Legislative Research Commission be requested to approve the payment of dues to join the National Association on Administrative Rules Review.

House Bill 322

Subcommittee staff explained that: (1) an amendment to House Bill 322 made when it was considered during the 1994 Regular Session failed to include a necessary amendment to the section establishing the deadline for a request for a hearing after an administrative body had filed a Notice of Intent To Promulgate Administrative Regulations; (2) an administrative body could still schedule a hearing 20 to 30 days after publication; and (3) if an administrative body exercised its option to conduct a hearing 20 days after the Notice of Intent was published in the Administrative Register, the public would have insufficient time to request a hearing;

The Subcommittee approved a motion to request administrative bodies to hold hearings required after a Notice of Intent To Promulgate Administrative Regulations 30 days after publication of the Notice of Intent in the Administrative Register.

The Subcommittee adjourned at 12 noon until July 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 APPROPRIATIONS AND REVENUE
Meeting of May 18, 1994

The Interim Joint Committee on Appropriations and Revenue met Wednesday, May 18, 1994, and reviewed Revenue Cabinet administrative regulations. The committee took the following action:

The committee determined that Revenue Cabinet administrative regulations 103 KAR 15:040, 103 KAR 16:010, 103 KAR 16:100, 103 KAR 16:110, 103 KAR 16:120, 103 KAR 16:130, 103 KAR 16:150, and 103 KAR 17:060, previously found deficient by the committee during quadrennial review, were amended by the cabinet and now conform to the provisions of KRS Chapter 13A. The committee determined that administrative regulation 103 KAR 16:145, previously found deficient by the committee during quadrennial review and amended by the Administrative Regulation Review Subcommittee to correct statutory citations, now complies with the provisions of KRS Chapter 13A.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of May 23, 1994

The Interim Joint Committee on Transportation met on Monday, May 23, 1994 and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

600 KAR 4:010. Certification of Disadvantaged, Minority and Women Business Enterprises.
600 KAR 4:020. The Disadvantaged, Minority and Women Business Enterprise Program.
601 KAR 9:160. Surrendered title of a vehicle.
601 KAR 11:080. Limited Commercial Driver's License for Farm-Related Service industries.

The Committee adjourned at 1:35 p.m.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of June 9, 1994

The Interim Joint Committee on Transportation met on Thursday, June 9, 1994 and submits this report: the Committee determined that the following regulation complied with KRS Chapter 13A:

605 KAR 1:200. Manufacture and Sale of Motor Homes.

The Committee adjourned at 9:45 a.m.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of June 14, 1994

The Interim Joint Committee on Education met Tuesday, June 14, 1994 and considered the following administrative regulations:

The Interim Joint Committee on Education approved a motion to remove the deficiencies on the following regulations:

Workforce Development Cabinet
780 KAR 2:020 - Occupational Appeals Officer
780 KAR 2:060 - Suspension and Expulsion of Students
780 KAR 2:090 - Postsecondary Vocational Technical School Admission Priorities

The Interim Joint Committee on Education approved the following regulations.

Department of Education
702 KAR 7:065 - Designation of Agent to Manage High School Interscholastic Athletics
703 KAR 4:090 - Statewide Assessment and Accountability Program; School Building and Local District Appeal Performance Judgments

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **A2**

The Locator Index lists all regulations published in VOLUME 21 of the Administrative Register from July, 1994 through June, 1995. 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 20 are those regulations that were originally published in the Volume 20 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1994 bound Volumes were published.

KRS Index **A7**

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 21 of the Administrative Register.

Subject Index **A11**

The Subject Index is a general index of regulations published in VOLUME 21 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

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VOLUME 20

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

12 KAR 1:115E	3166	5-13-94
12 KAR 1:120E	3166	5-13-94
12 KAR 1:125E	3166	5-13-94
12 KAR 1:130E	3167	5-13-94
12 KAR 1:135E	3167	5-13-94
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12 KAR 1:175E	3173	5-13-94
12 KAR 6:010E	3174	5-13-94
12 KAR 6:015E	3174	5-13-94
12 KAR 6:020E	3175	5-13-94
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401 KAR 42:060E	2530	2-15-94
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401 KAR 42:080E	2531	2-15-94
415 KAR 1:114E	2962	4-8-94
501 KAR 6:130E	2774	3-14-94
Replaced	2889	6-2-94
600 KAR 1:101E	3175	4-15-94
601 KAR 13:011E	3184	4-15-94
815 KAR 45:025E	2964	4-14-94
903 KAR 5:290E	2970	3-28-94
Replaced	2914	6-2-94
903 KAR 5:391E	2971	3-28-94
Replaced	2946	6-2-94
907 KAR 1:013E	281	7-7-93
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907 KAR 1:023E	3185	4-29-94
907 KAR 1:150E	3186	4-28-94
907 KAR 1:625E	3187	4-25-94
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907 KAR 1:630E	3188	4-25-94
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ORDINARY REGULATIONS:

12 KAR 1:111	3322	
12 KAR 1:115	3322	
12 KAR 1:120	3323	
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30 KAR 3:010	3339	
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30 KAR 3:030	3341	
32 KAR 2:150		
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32 KAR 2:170	1720	
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32 KAR 2:180	1721	6-2-94
32 KAR 2:190	1722	
As Amended	3191	6-2-94
32 KAR 2:200	2269	
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103 KAR 15:040		
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